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October 15, 2018

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

VIA ELECTRONIC FILING

**Re: Peoples Natural Gas Company, LLC v. Pittsburgh Water and Sewer Authority –
Water; Docket Nos. R-2018-3002645 and C-2018-3004864**

**Peoples Natural Gas Company, LLC v. Pittsburgh Water and Sewer Authority –
Wastewater; Docket No. R-2018-3002647**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Pittsburgh Water and Sewer Authority's Preliminary Objections to the Amended Complaint of Peoples Natural Gas Company, LLC in the above-referenced docket.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek

Counsel to the Pittsburgh Water and Sewer Authority

Enclosure

c: Administrative Law Judge Mark A. Hoyer
Administrative Law Judge Conrad A. Johnson
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Dated this 15th day of October, 2018, at Harrisburg, Pennsylvania.

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October 15, 2018

Counsel to the Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PEOPLES NATURAL GAS COMPANY LLC	:	
v.	:	Docket No. R-2018-3002645
	:	C-2018-3004864
PITTSBURGH WATER AND SEWER AUTHORITY – WATER,	:	
	:	
PEOPLES NATURAL GAS COMPANY LLC	:	Docket No. R-2018-3002647
v.	:	
PITTSBURGH WATER AND SEWER AUTHORITY – WASTEWATER	:	

**PRELIMINARY OBJECTIONS OF PITTSBURGH WATER
AND SEWER AUTHORITY TO THE AMENDED COMPLAINT OF
PEOPLES NATURAL GAS COMPANY LLC**

Pursuant to 52 Pa. Code § 5.101, Pittsburgh Water and Sewer Authority ("PWSA") hereby submits Preliminary Objections to the Amended Complaint filed by Peoples Natural Gas Company LLC ("Peoples") on October 5, 2018, in the above-captioned docket.

I. OVERVIEW

PWSA files these Preliminary Objections pursuant to 52 Pa. Code § 5.101(a)(7) on the grounds that the Amended Complaint does not aver facts that would confer standing on Peoples to participate in this proceeding to advance its competitive interests, nor to contest Tariff Water – Pa. P.U.C. No. 1 ("Water Tariff") filed by PWSA on July 2, 2018, at Docket No. R-2018-3002645. In addition, PWSA objects on the grounds that the Amended Complaint includes scandalous and/or impertinent matter that should be stricken pursuant to 52 Pa. Code § 5.101(a)(2).

II. BACKGROUND

1. On July 2, 2018, PWSA filed the Water Tariff with the Pennsylvania Public Utility Commission ("Commission" or "PUC") at Docket No. R-2018-3002645. On that same date, PWSA filed Tariff Wastewater – Pa. P.U.C. No. 1 ("Wastewater Tariff") with the Commission at Docket No. R-2018-3002647. On July 2, 2018, PWSA moved to consolidate the Water Tariff and Wastewater Tariff proceedings, which motion was granted by Prehearing Order dated July 20, 2018.

2. On July 12, 2018, the Commission issued Suspension Orders at Docket No. R-2018-3002645 (Water Tariff) and Docket No. R-2018-3002647 (Wastewater Tariff) ordering investigations into the lawfulness, justness, and reasonableness of the proposed rate increases. The Water Tariff and Wastewater Tariff were suspended by operation of law until March 31, 2019, unless permitted by Commission Order to become effective at an earlier date.

3. A Prehearing Conference Order was issued on July 12, 2018, scheduling an initial prehearing conference for Thursday, July 19, 2018, at 2:00 p.m. Since that time, discovery has been ongoing in this ratemaking proceeding. During the prehearing conference, the attending parties agreed upon a litigation schedule which listed September 25, 2018, as the due date for Service of Written Direct Testimony from all parties.

4. On September 21, 2018, Peoples filed its Complaint in this ratemaking proceeding. PWSA was served by the Secretary's Bureau with the Complaint on September 24, 2018, one day before the deadline for the submission of written direct testimony.

5. By way of a Secretarial Letter, the Commission requested an answer to Peoples' Complaint within 10 days from the September 24, 2018, date of service.

6. On September 27, 2018, Peoples served its "Interrogatories and Requests for Production of Documents Propounded by Peoples Natural Gas Company LLC to Pittsburgh Water and Sewer Authority – Set I" (hereinafter referred to as "Set I Interrogatories") upon PWSA.

7. On October 1, 2018, pursuant to the Prehearing Order, counsel for PWSA telephoned counsel for Peoples to object orally to Set I Interrogatories. Counsel were unable to resolve the dispute through informal negotiations.

8. On October 2, 2018, PWSA served its written objections to Set I Interrogatories.

9. On October 4, 2018, PWSA filed an Answer to Peoples' Complaint and Preliminary Objections to Peoples' Complaint at PUC Docket Nos. R-2018-3002645 and C-2018-3004864 on the grounds that Peoples' lacked standing to contest the Water Tariff in order to pursue its competitive interests and that the Complaint included scandalous and/or impertinent matter.

10. On October 5, 2018, Peoples filed an Amended Complaint against the Water Tariff and Wastewater Tariff at Docket No. C-2018-3004864. Peoples' amendments to its complaint reflect, among other things, allegations that Peoples is a wastewater customer of PWSA and is a tenant receiving water service from PWSA. Also on October 5, 2018, Peoples filed a Motion to Dismiss Objections and Compel Responses to Discovery ("Motion to Compel").

11. On October 9, 2018, PWSA filed its Answer to Peoples' Motion to Compel.

III. STANDARD OF REVIEW

12. Pursuant to the PUC's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) *Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.*
- (3) Insufficient specificity of a pleading.

- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party, or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) *Standing of a party to participate in the proceeding.*

52 Pa. Code § 5.101(a) (emphasis added).

13. When ruling on preliminary objections, the Presiding Officer "must accept as true all well-plead allegations of material facts as well as all of the inferences reasonably deducible" therefrom. *Stilp v. Commonwealth*, 910 A.2d 775, 781 (Pa. Commw. 2006) (citing *Dep't. of General Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Commw. 2005)). In order to sustain preliminary objections, "it must appear with certainty that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party." *Stilp*, 910 A.2d at 781. However, the Presiding Officer "does not need to accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion." *Stanton-Negley Drug Co. v. Dep't. of Public Welfare*, 927 A.2d 671, 673 (Pa. Commw. 2007).

IV. PRELIMINARY OBJECTIONS

A. **Preliminary Objection No. 1—Peoples Lacks Standing to Participate in this Proceeding to Advance its Competitive Interests in Forcing the PUC to Require PWSA to Enter into a "Public-Private" Partnership or Engage in Unwanted Discussions Related to the Same.**

14. Based on the averments in Peoples' Amended Complaint, recent statements by Peoples' President, and the information sought by Peoples in its Set I Interrogatories, Peoples' motivation in filing the Amended Complaint in this matter is to advance its private competitive interests to force PWSA to enter into discussions regarding a "public-private" partnership, rather than to address the water and wastewater rates that the Commission is reviewing in this case. The

Commission has historically prevented entities with competitive motivations from participating in proceedings. The Commission should dismiss Peoples' Amended Complaint and attempt to commandeer this proceeding to advance its business interests.

15. The Supreme Court of Pennsylvania has repeatedly held that "In Pennsylvania, a party seeking judicial resolution of a controversy 'must establish as a threshold matter that he has standing to maintain the action.'" *Johnson v. Am. Std.*, 607 Pa. 492, 8 A.3d 318, 329 (2010) (quoting *Fumo v. City of Philadelphia*, 601 Pa. 322, 972 A.2d 487, 496 (2009)). At the heart of the law on standing is the principle "that a person who is not adversely affected in any way by the matter he seeks to challenge is not 'aggrieved' thereby and has no standing to obtain a judicial resolution of his challenge. In particular, it is not sufficient for the person claiming to be 'aggrieved' to assert the common interest of all citizens in procuring obedience to the law." *Wm. Penn Parking Garage, Inc. v. Pittsburgh*, 464 Pa. 168, 346 A.2d 269, 280-81 (1975) (plurality).

15. Consistent with the aforementioned precedent, in order to participate in this ratemaking proceeding, Peoples must demonstrate that it has standing. Specifically, Peoples must show that it has an interest in the Water Tariff and Wastewater Tariff that is substantial, direct, and immediate in the present ratemaking proceeding. *Wm. Penn Parking Garage, Inc. v. Pittsburgh*, 464 Pa. 168, 346 A.2d 269, 280 (1975) (plurality); accord *Franklin Twp. v. Pennsylvania Dept. of Env'tl. Res.*, 499 Pa. 162, 452 A.2d 718 (1982).

16. For an interest to be "substantial," it must be one that is "in the resolution of the challenge which 'surpasses the common interest of all citizens in procuring obedience to the law.'" *Pittsburgh Palisades Park, LLC v. Commonwealth of Pennsylvania*, 585 Pa. 196, 888 A.2d 655, 660 (2005); accord *Commonwealth of Pennsylvania v. Donahue*, 626 Pa. 437, 98 A.3d 1223, 1229 (2014).

17. For an interest to be "direct," it must "mandate[] a showing that the matter complained of 'caused harm to the party's interest,' . . . i.e., a causal connection between the harm and the violation of law." *Id.* Conversely, "[m]ere conjecture about possible future harm does not confer a direct interest in the subject matter of a proceeding." *Joint Application of Columbia Water Co. and Marietta Gravity Water Co.*, 2012 Pa. PUC LEXIS 1147, at *3 (Order entered July 20, 2012) (citing *Official Court Reporters of the Court of Common Pleas of Philadelphia Cnty. v. Pennsylvania Labor Relations Bd.*, 502 Pa. 518, 467 A.2d 311 (1983)).

18. Likewise, the Commission has repeatedly held that competitive interests "are too speculative and conjectural to confer a direct interest sufficient to confer standing." *Id.* at *18; *see also, Joint Application of Aqua Pennsylvania and Country Club Gardens Water Co.*, 2006 Pa. PUC LEXIS 706, at *14 (Order entered Apr. 7, 2006) (Municipal authorities dismissed from proceeding because competitive interests are "not enough to confer standing" and municipal authorities were not customers of the public utility); *Municipal Auth. of the Borough of West View v. Pennsylvania-American Water Co.*, 2010 Pa. PUC LEXIS 322, at *6 (Order entered July 16, 2010) (Municipal authority dismissed from proceeding because its competitive interest "d[id] not amount to a grievance that confers standing").

19. Lastly, an interest is "immediate" only if it shares a causal connection that is neither remote nor speculative. *Commonwealth of Pennsylvania v. Donahue*, 626 Pa. 437, 98 A.3d 1223, 1229 (2014); *Pittsburgh Palisades Park, LLC v. Commonwealth of Pennsylvania*, 585 Pa. 196, 888 A.2d 655, 659-60 (2005).

20. In Paragraph 18 of its Amended Complaint, Peoples demands that the Commission require PWSA to demonstrate the reasonableness of PWSA's alleged rejection of public-private partnerships and privatization options advanced by Peoples.

21. As noted in a recent article from the *Pittsburgh Post-Gazette*, attached hereto as **Exhibit A**, Peoples' real interest in the Water Tariff is not derived from Peoples' status as a sewer service customer of PWSA, Peoples' proximity to PWSA's infrastructure assets, or Peoples' newly alleged indirect receipt of water services from PWSA by virtue of a lease and sublease. Rather, Peoples' Amended Complaint is a thinly veiled attempt to gain leverage over PWSA concerning a public-private partnership proposal that Peoples is promoting through an aggressive advertising campaign.

22. In the *Pittsburgh Post-Gazette* article, Peoples' President Morgan O'Brien is quoted as saying "We're not trying to pick a fight over what the rates will be," and "We're asking the PUC to engage with us and PWSA to look at the issue, at whether there is a business case to partner."

Exhibit A.

23. Furthermore, when Peoples submitted a response to PWSA's Request for Expressions of Interest for Providing Billing, Call Center, Metering and Collections Services in July 2017, Peoples indicated that the information requested in Set I Interrogatories 1-8, 10-18, and 20-26 was needed for it to provide a comprehensive technical and cost proposal. The vast majority of Peoples' Set I Interrogatories, therefore, only sought information that would further Peoples' private, competitive interests and do not reflect a substantial, direct, and immediate interest in the present proceeding. Peoples submitted an independent response to the RFEI and submitted a joint response with Averta Corp., which has offices in the same building as Peoples and is represented by Daniel O'Brien.

24. The Amended Complaint is part of an ongoing effort by Peoples to advance its strategy to either privatize (and own) the entire system, or to gradually take over responsibility for and ownership of all PWSA facilities as replacements occur, as well as usurping other

management, operations, customer service and administrative functions. Under the replacement strategy, PWSA customers will pay Peoples for the installation and return on the new infrastructure, and also have the opportunity to purchase the system at the end of all of the replacements, thus paying twice. Attached as **Exhibit B** are additional news articles that detail Peoples' efforts, including discussions with Mayor Peduto, and Pittsburgh City Council, Peoples' intention to create a water utility and Peoples' desire to supplant PWSA.

25. Peoples also has waged a social media war to disparage PWSA. A recent example, posted on October 3, 2018, falsely implies that water interruption issues currently occurring in Hopewell Township, which is outside of PWSA's territory, could happen to PWSA's customers. Attached as **Exhibit C** is the post that was captured by screenshot on October 3, 2018 at approximately 6:00 p.m. This post was subsequently edited by "Peoples Water" to remove the reference to PWSA.

26. Peoples' Amended Complaint attempts to overcome this barrier to standing by asserting that as a customer or a tenant "directly affected by the rates charged by PWSA, it has standing to participate in this proceeding—even if it has a competitive interest in the proceeding." Amended Compl. ¶13 (citing *Petition of Peoples Natural Gas Co. LLC*, M-2017-2640306 (Order entered June 14, 2018) p. 22).

27. Peoples' assertion that it would have standing despite its competitive interest in the proceeding misstates the Commission's decision in *Petition of Peoples Natural Gas Co. LLC*. In that proceeding, Duquesne Light Company ("DLC") had filed a petition to intervene and Peoples objected on the basis that DLC was attempting to establish standing as a customer in order to further its competitive interest once DLC's petition to intervene was granted. *Petition of Peoples Natural Gas Co. LLC*, M-2017-2640306 (Order entered June 14, 2018) p. 17. The Commission

disagreed with this assessment, but not on the grounds that DLC could participate despite its competitive interest (which is what Peoples implied in Paragraph 13 of its Amended Complaint). On the contrary, the Commission's decision hinged on a finding that DLC's overriding interests arose from its status as a customer of Peoples, not a competitor. *Id.* at 21. As noted in the foregoing paragraphs, the overriding interest of Peoples in the present proceeding is its competitive interest regarding its misguided "partnership" proposal.

28. Peoples' participation in this proceeding to advance its corporate competitive interests is an abuse of the rate case process, and should be summarily rejected by dismissing, in its entirety, Peoples' Amended Complaint.

WHEREFORE, the Pittsburgh Water and Sewer Authority respectfully requests that the Commission sustain Preliminary Objection No. 1 pursuant to 52 Pa. Code § 5.101(a)(2) and enter an Order dismissing Peoples Natural Gas Company LLC's Amended Complaint in its entirety.

B. Preliminary Objection No. 2 – If Peoples' Amended Complaint is not Dismissed in Its Entirety Pursuant to Preliminary Objection No. 1, then Peoples Lacks Standing To File Suit Against PWSA Regarding The Water Tariff or to Address Water Issues in this Proceeding.

29. PWSA incorporates Paragraphs 1 through 28 as if fully set forth herein.

30. Notwithstanding the above, assuming *arguendo* that Peoples' Amended Complaint is not dismissed in its entirety pursuant to Preliminary Objection No. 1, Peoples' participation in this ratemaking proceeding must be limited to Peoples' interest as a customer regarding the Wastewater Tariff. Peoples' participation in this proceeding does not encompass the Water Tariff or any other interests proposed by Peoples in its Amended Complaint that relate to Peoples' private, competitive interests regarding its misguided "partnership" proposal. Due to the limited scope of

Peoples' participation in this proceeding, Peoples lacks standing to raise many of the issues found in its Amended Complaint.

31. Peoples' Amended Complaint alleges that Peoples is a wastewater customer of PWSA at 2612 Chartiers Avenue, Pittsburgh, Pennsylvania. Amended Compl. ¶11.

32. Peoples' Amended Complaint, for the first time, asserts standing with regard to the Water Tariff on the basis that it consumes water services at two different locations from PWSA. Peoples avers that it is a tenant at 225 North Shore Drive, Pittsburgh, Pennsylvania and a sublessee at 375 North Shore Drive, Pittsburgh, Pennsylvania. Amended Compl. ¶12. Peoples' admits that it is not a water services customer of PWSA, but rather its landlords are. Amended Compl. ¶12. Peoples alleges that it is required to "reimburse" its landlord for the cost of water services at the 225 North Shore Drive location and that the cost of water services is included in its rent at the 375 North Shore Drive location. Amended Compl. ¶12a-b.

33. Peoples' attempt to assert standing on the grounds that its landlords are PWSA customers is insufficient. First, Peoples is not a customer of PWSA. 52 Pa. Code § 65.1 defines customer as "[a] party contracting with a public utility for service." Peoples does not meet this definition. Second, Peoples "may not claim standing to vindicate the rights of a third party who has the opportunity to be heard." *Mid-Atlantic Power Supply Assoc. v. Pennsylvania Public Utility Comm'n*, 746 A.2d 1196, 1200 (Pa. Commw. 2000) (citing *Pennsylvania Dental Assoc. v. Commonwealth of Pennsylvania, Dep't of Health*, 75 Pa. Commw. 7, 461 A.2d 329 (Pa. Commw. 1983)). Peoples, therefore, cannot rely upon its landlords' status as PWSA customers to participate in this proceeding with regard to the Water Tariff.

34. Peoples' general assertion in Paragraph 15 of its Amended Complaint that "[n]early all of PWSA's customers are also customers of Peoples" does not confer standing on Peoples to

participate in this ratemaking proceeding as Peoples is attempting to assert "the common interest of all citizens in procuring obedience to the law" which cannot serve as the basis for standing. *Wm. Penn Parking Garage, Inc. v. Pittsburgh*, 464 Pa. 168, 346 A.2d 269, 280-81 (1975) (plurality).

35. Peoples attempts to overcome its lack of standing with regard to the Water Tariff by referencing the condition and location of PWSA's water pipeline infrastructure in relation to Peoples' own natural gas pipeline infrastructure throughout Pittsburgh, Pennsylvania. Amended Compl. ¶16. This allegation is a feeble attempt to create standing, without stating so expressly, by asserting that the close proximity of PWSA's infrastructure to Peoples' infrastructure poses a risk to Peoples and the safety of the public. Amended Compl. ¶16. Specifically, Peoples calls the Commission's attention to the potential damage that could result if a water pipeline burst and the effects as such on Peoples' operations. Amended Compl. ¶16. Peoples expressly asserts standing in Paragraph 19 of its Amended Complaint on the basis that Peoples' facilities are "directly impacted by the state of disrepair of PWSA's facilities." Amended Compl. ¶19. Lastly, along similar lines, Peoples references a boil water advisory and its alleged effects on Peoples on August 28, 2017. Amended Compl. ¶12c.

36. None of the allegations found in Paragraphs 12, 16, or 19 of its Amended Complaint are sufficient to confer standing on Peoples. Peoples' attempts to create standing, therefore, are purely speculative and tantamount to asserting "the common interest of all citizens in procuring obedience to the law" which cannot serve as the basis for standing. *Wm. Penn Parking Garage, Inc. v. Pittsburgh*, 464 Pa. 168, 346 A.2d 269, 280-81 (1975) (plurality). The State Advocates (i.e., PUC's Bureau of Investigation and Enforcement, Office of Consumer Advocate, Office of Small Business Advocate) are participating in this proceeding and can adequately address the issues raised by Peoples.

37. In Paragraph 18 of its Amended Complaint, Peoples demands the Commission to require PWSA "to demonstrate that its summary refusal to explore viable public-private partnerships and privatization options . . . is reasonable." Peoples fails to aver any facts in Paragraph 18 of its Amended Complaint that would confer standing on Peoples to make such a demand upon the Commission or participate in the present ratemaking proceeding with regard to any matter relating to the Water Tariff. Rather, Peoples' motivation for including such a demand in Paragraph 18 of its Amended Complaint is tied solely to Peoples' private competitive interests related to a public-private partnership that Peoples is aggressively pursuing in the public sphere. As noted previously, Peoples is not a water services customer of PWSA as defined by 52 Pa. Code § 65.1. Peoples' attempt in Paragraph 18 of its Amended Complaint to fabricate standing to participate in this ratemaking proceeding with regard to the Water Tariff, therefore, is solely motivated by Peoples' desire to force PWSA into a misguided proposed "partnership" wherein PWSA staff and operations would be taken over by Peoples-affiliated staff and operational management to the detriment of PWSA's ratepayers. The Commission has repeatedly held that competitive interests are insufficient to confer standing. *Joint Application of Columbia Water Co. and Marietta Gravity Water Co.*, 2012 Pa. PUC LEXIS 1147, at *18 (Order entered July 20, 2012); *Municipal Auth. of the Borough of West View v. Pennsylvania-American Water Co.*, 2010 Pa. PUC LEXIS 322, at *6 (Order entered July 16, 2010); *Joint Application of Aqua Pennsylvania and Country Club Gardens Water Co.*, 2006 Pa. PUC LEXIS 706, at *14 (Order entered Apr. 7, 2006); *Phillips Production Company v. Columbia Gas of Pennsylvania, Inc.*, 1993 Pa. PUC LEXIS 25, at *8-9 (Order entered May 19, 1993).

WHEREFORE, Pittsburgh Water and Sewer Authority respectfully requests, in the alternative to Preliminary Objection No. 1, that the Commission sustain Preliminary Objection No.

2 pursuant to 52 Pa. Code § 5.101(a)(7) and enter an Order dismissing Peoples Natural Gas Company LLC's Amended Complaint insofar as the Amended Complaint addresses matters related to Tariff Water — Pa. P.U.C. No. 1 and limit Peoples Natural Gas Company LLC's participation in this ratemaking proceeding solely to Tariff Wastewater — Pa. P.U.C. No. 1 and Peoples status as a sewer customer.

C. **Preliminary Objection No. 3 – If Peoples' Amended Complaint is not Dismissed in Its Entirety Pursuant to Preliminary Objection No. 1, then Peoples Participation Must Be Limited to Peoples' Interests, If Any, as a Wastewater Customer.**

38. PWSA incorporates Paragraphs 1 through 37 as if fully set forth herein.

39. Notwithstanding the above, assuming *arguendo* that Peoples' Amended Complaint is not dismissed in its entirety pursuant to Preliminary Objection No. 1, Peoples' only plausible substantial, direct, and immediate interest in the present ratemaking proceeding would be derived from Peoples' status as a sewer service customer. Peoples' participation in this proceeding, therefore, must be limited to reflect those customer-oriented interests alone and not be allowed to expand into the domain of Peoples' private competitive interests with regard to its "partnership" proposal or other water issues.

40. As noted in our Preliminary Objection No. 1, *supra*, the Commission has repeatedly held that competitive interests are insufficient to confer standing. The Commission's adherence to this rule is not disturbed by Peoples' argument that it has standing to participate "even if it has a competitive interest in the proceeding" as that argument misstates the Commission's decision in *Petition of Peoples Natural Gas Co. LLC, supra*. Where a claimant is both a customer and a competitor of the utility that initiated the ratemaking proceeding, the competitor-customer may have standing to participate, but only so far as its interests as a customer are concerned. *Pennsylvania Public Utility Comm'n, et al. v. Pennsylvania Gas & Water Co.*, 1995 Pa. PUC

LEXIS 29, at *11-12 (Order entered Jan. 11, 1995) (a competitor-customer of a utility had standing to participate only as a customer and its biased interests required the Commission to weigh the credibility of its participation); *see also Pennsylvania Petroleum Assoc. v. Pennsylvania Power & Light Co.*, 32 Pa. Commw. 19, 377 A.2d 1270, 1273 (Pa. Commw. 1977) (association's appeal dismissed where its predominant interest was a competitive interest), *aff'd*, *Pennsylvania Petroleum Assoc. v. Pennsylvania Power & Light Co.*, 488 Pa. 308, 412 A.2d 522, 311 (1980) (affirming the lower court's ruling, the Supreme Court reasoned that the protection of competitive interests was "not an objective of the regulatory scheme.")

41. Furthermore, Peoples' participation should not encompass questions that are common to all PWSA customers and service recipients which are already adequately represented by the State Advocates. Peoples' Amended Complaint includes several references to the quality of PWSA's water service water advisories. The State Advocates are better equipped to ensure that the public interest is well represented with regard to public safety and health. The State Advocates, as statutory creations, are granted greater latitude to participate in ratemaking proceedings than an individual recipient of utility services. Whereas allowing 80,000 customers to participate in this ratemaking proceeding would be impracticable, Peoples' participation must not result in unduly duplicative advocacy.

42. In light of the foregoing, if Peoples' Amended Complaint is not dismissed pursuant to Preliminary Objection No. 1, then Peoples' participation in this proceeding must be limited to its standing as a sewer service customer of PWSA. Peoples' Amended Complaint, therefore, should be dismissed insofar as it contains matter or raises issues beyond the scope of Peoples' standing to participate in this proceeding as a sewer service customer.

WHEREFORE, Pittsburgh Water and Sewer Authority respectfully requests, in the alternative to Preliminary Objection No. 1, that the Commission sustain Preliminary Objection No. 3 pursuant to 52 Pa. Code § 5.101(a)(7) and enter an Order dismissing Peoples Natural Gas Company LLC's Amended Complaint insofar as the Amended Complaint addresses matters beyond the scope of Peoples Natural Gas Company LLC's interests, if any, as a sewer service customer of Pittsburgh Water and Sewer Authority.

D. Preliminary Objection No. 4 in the Nature of a Motion to Strike – Peoples' Amended Complaint Raises Scandalous and Impertinent Allegations That Must Be Stricken

43. PWSA incorporates by reference Paragraphs 1 through 42 as if fully set forth herein.

44. 52 Pa. Code § 5.101(a)(2) states that a preliminary objection is proper if a pleading includes scandalous or impertinent matter or if it fails to conform to 52 Pa. Code Chapter 5. Scandalous and impertinent matter is defined as "allegations . . . immaterial and inappropriate to the proof of the cause of action." *Common Cause/Pennsylvania v. Commonwealth of Pennsylvania*, 710 A.2d 108, 115 (Pa. Commw. 1998); *see also, James Coppedge v. PECO Energy Co.*, 2010 Pa. PUC LEXIS 95, at *13 (Initial Decision Mar. 9, 2010) (allegations stricken as scandalous and impertinent pursuant to 52 Pa. Code § 5.101(a)(2)), *adopted without modification by, James Coppedge v. PECO Energy Co.*, 2010 Pa. PUC LEXIS 3111 (Order entered Aug. 3, 2010); *Piunti v. DOL & Indus., Unemployment Comp Bd. of Review*, 900 A.2d 1017, 1019 (Pa. Commw. 2006) (inaccurate allegations stricken as scandalous and impertinent); *Feingold v. Kent & McBride, P.C.*, 2007 Phila. Ct. Com. Pl. LEXIS 43, *5 (C.C.P. Phila. Cnty., 2007) (allegations stricken as scandalous and impertinent that 'ha[ve] no place in a Complaint."); *Edmonds v. Royal*, 2005 Phila. Ct. Com. Pl. LEXIS 392, *3 (C.C.P. Phila. Cnty., 2005) (New

Matter stricken as scandalous and impertinent where it was "not relevant to the causes of action in the pleadings.").

45. Allegations are immaterial to the action at hand if "whether proven or not, or whether admitted or denied, [the allegations] can have no influence in leading the result of the judicial inquiry." *Fromm v. Fromm*, 42 Pa. D. & C.2d 77, 83 (C.C.P. 1967); *accord Clinton Brown v. Philadelphia Gas Works*, 2012 Pa. PUC LEXIS 1045, at *8 n.2 (Initial Decision May 22, 2012) (citing *Jefferies v. Hoffman*, 417 Pa. 1, 207 A.2d 774 (1964)) *adopted without modification by, Clinton Brown v. Philadelphia Gas Works*, 2012 Pa. PUC LEXIS 1246 (Order entered July 31, 2012); *Agron Vata v. Philadelphia Gas Works*, 2010 Pa. PUC LEXIS 1765, at *3 n.3 (Order entered Aug. 24, 2010).

46. Peoples' Amended Complaint contains several paragraphs wherein Peoples pleads allegations of impertinent and scandalous matter. Specifically, Amended Complaint Paragraphs 16, 17, 18, and 19 are replete with allegations containing impertinent and scandalous matter and should be stricken from the Amended Complaint.

47. In Paragraph 16 of its Amended Complaint, Peoples alleges that PWSA's pipeline poses a serious risk to Peoples' facilities, the safety of the public, and the reliability of Peoples' service to customers. In doing so, Peoples demands the Commission "ensure that any rate relief awarded . . . be properly used by PWSA to repair and replace its pipeline in a timely manner and mitigate risk to Peoples' facilities." Amended Compl. ¶16. Peoples' factual allegations in Paragraph 16 are immaterial to the present ratemaking proceeding as this ratemaking proceeding is not the proper forum to address Peoples' speculative concerns regarding PWSA's infrastructure. Furthermore, as this ratemaking proceeding is primarily concerned with establishing lawful, just,

and reasonable rates for PWSA's customers, the truth or falsity of Peoples' allegations in Paragraph 16 are collateral and can have no bearing on the resolution of this ratemaking proceeding.

48. Further, in Paragraph 17 of its Amended Complaint, Peoples levels a collateral attack on the Commission's decision in *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, Docket Nos. M-2018-2640802 and M-2018-2640803 ("Implementation Order") (as the Implementation Order did not require PWSA to submit a long-term infrastructure improvement plan until September 28, 2018) and requests that the Commission establish "temporary rates" under 66 Pa. C.S. §§ 1308, 1310. Peoples' averments in Paragraph 17 are not pertinent to the present ratemaking proceeding and represent a collateral attack on the statutorily created schedule as implemented by the Commission's Implementation Order. The present ratemaking proceeding is not concerned with a further discussion or debate on the sufficiency of the statutorily prescribed schedule for PWSA's long-term infrastructure improvement plan. Peoples' perceived insufficiencies, therefore, are immaterial as any discussion concerning the schedule for PWSA's long-term infrastructure improvement plan can "have no influence in leading the result of the judicial inquiry." *Fromm v. Fromm*, 42 Pa. D. & C.2d 77, 83 (C.C.P. 1967); accord *Clinton Brown v. Philadelphia Gas Works*, 2012 Pa. PUC LEXIS 1045, at *8 n.2 (Initial Decision May 22, 2012) (citing *Jefferies v. Hoffman*, 417 Pa. 1, 207 A.2d 774 (1964)), adopted without modification by, *Clinton Brown v. Philadelphia Gas Works*, 2012 Pa. PUC LEXIS 1246 (Order entered July 31, 2012); *Agron Vata v. Philadelphia Gas Works*, 2010 Pa. PUC LEXIS 1765, at *3 n.3 (Order entered Aug. 24, 2010).

49. Moreover, in Paragraph 18 of its Amended Complaint, Peoples demands that the Commission require PWSA to demonstrate the reasonableness of PWSA's alleged rejection of public-private partnerships and privatization options advanced by Peoples. As noted previously,

Peoples lacks standing to participate in this ratemaking proceeding to raise its competitive interests. Furthermore, Peoples' demand that PWSA demonstrate the reasonableness of PWSA's decision not to engage in a public-private partnership is both impertinent to the present ratemaking proceeding and scandalous.

50. As noted in a recent article from the *Pittsburgh Post-Gazette*, attached hereto as **Exhibit A**, Peoples' real interest in the Water Tariff is not derived from Peoples' status as a sewer service customer of PWSA or Peoples' proximity to PWSA's infrastructure assets. Rather, Peoples' Amended Complaint is a thinly veiled attempt to gain leverage over PWSA concerning a public-private partnership proposal by Peoples that was considered and rejected by PWSA.

51. Through the passage of Act 65 of 2017 and the issuance of the Implementation Order, the PUC obtained jurisdiction over PWSA. Since that time, PWSA has prioritized its efforts and has chosen to focus on cooperating and complying with the Commission's orders and requests, rather than pursuing a public-private partnership with another entity. Moreover, as a regulated public utility, PWSA has a statutory duty to ensure its rates are lawful, just, and reasonable. In light of this obligation, PWSA reached the informed opinion that the public-private partnership envisioned by Peoples, as detailed by **Exhibit A**, should not be pursued at this time.

52. Therefore, Peoples' demand in Paragraph 18 is not gauged to further the development of the current ratemaking proceeding, but rather is intended to further a separate discussion concerning Peoples' private competitive interest with regard to a public-private partnership which remains undefined and is a distraction to PWSA at this time, in light of competing priorities owed to its customers.

53. Finally, in Paragraph 19 of its Amended Complaint, Peoples reasserts the same allegations of Paragraph 16 in conclusory fashion. Peoples asserts that its facilities are "directly

impacted" by the "state of disrepair of PWSA's facilities." Amended Compl. ¶19. As with Peoples' allegations in Paragraph 16, Peoples' statements in Paragraph 19 are immaterial to the present ratemaking proceeding as this ratemaking proceeding is not the proper forum to address Peoples' unfounded concerns. Peoples has failed to allege any instance where the condition of PWSA's facilities have impacted Peoples beyond its misleading citation to a boil water advisory in August 2018. Peoples' assertions about the state of PWSA's facilities, therefore, are impertinent to the present ratemaking proceeding and are scandalous insofar as Peoples is relying upon this ratemaking proceeding to further its own competitive interest of forcing PWSA into a "partnership" that PWSA does not desire to explore due to PWSA's statutorily-mandated regulatory priorities and other duties owed to its customers.

WHEREFORE, Pittsburgh Water and Sewer Authority respectfully requests that the Commission sustain Preliminary Objection No. 4 pursuant to 52 Pa. Code § 5.101(a)(2), enter an Order to strike Paragraphs 16, 17, 18, and 19 from Peoples Natural Gas Company LLC's Amended Complaint and prohibit Peoples Natural Gas Company LLC from raising those matters in testimony, discovery, hearings, briefs or other filings submitted in this proceeding.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the Pittsburgh Water and Sewer Authority respectfully requests that the Pennsylvania Public Utility Commission:

- (1) grant these Preliminary Objections;
- (2) issue an Order dismissing Peoples Natural Gas Company LLC's Amended Complaint in its entirety because it lacks standing to use this proceeding to advance its private competitive interests;
- (3) alternatively,
 - a. issue an Order finding that Peoples Natural Gas Company LLC lacks standing to contest Tariff Water – Pa. P.U.C. No. 1 and other water issues based on the averments in its Amended Complaint; and
 - b. issue an Order finding that Peoples Natural Gas Company LLC's participation in this proceeding is limited solely to its interests, if any, as a sewer service customer of Pittsburgh Water and Sewer Authority; and

(4) strike Paragraphs 16, 17, 18, and 19 of the Amended Complaint as scandalous and impertinent, and prohibit Peoples from raising those matters in this proceeding.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By


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Dated: October 15, 2018

VERIFICATION

I, Debbie M. Lestitian, Chief Corporate Counsel and Chief of Administration for Pittsburgh Water and Sewer Authority, 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 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 unsworn falsification to authorities).

10/15/18
Date

Debbie M. Lestitian
Signature

EXHIBIT A



Peoples Gas files complaint over PWSA rate hike proposals

September 26, 2018 12:28 PM

By Diana Nelson Jones / Pittsburgh Post-Gazette

Peoples Natural Gas has filed a complaint with the Pennsylvania Public Utility Commission over the Pittsburgh Water and Sewer Authority's proposed rate increases, joining almost 50 other complainants since the rate proposal for 2019 was announced in June.

The document was filed Friday.

Under PWSA's proposals, rates would increase for residential customers about 17 percent and about 10 percent for educational and health care institutions. The authority came under PUC oversight in April, and one of its requirements is to show that rates reflect actual use by the consumer.

Peoples' complaint states that "there is no assurance that PWSA's expense claims will align with its actual level of [infrastructure] investment," and that a rate increase would need an infrastructure plan to justify it. "The process appears backwards," the complaint reads.

PWSA Executive Director Robert Weimar said in a statement: "PWSA has suffered from a lack of investment and attention for decades. However, the general issues raised in Peoples Gas' formal complaint to the PUC are typical of older water and sewer systems across the country. Our tariff request is a necessary first step to getting the resources in place to renew our system. As a publicly-controlled municipal authority, our capital improvement plan driving our tariff request was developed with public health and safety as the number one priority. This major water, sewer and stormwater systems renewal will take years, regardless of who manages the utility."

Peoples' complaint holds that its gas lines and PWSA's water lines run alongside each other and that the state of disrepair of PWSA's lines "poses a serious risk to Peoples facilities, the safety of the public and the reliability of Peoples' service."

PWSA's customers are Peoples' customers, and vice versa, giving Peoples "a substantial, direct and immediate interest in PWSA's rates and quality of service," according to the complaint.

Peoples' interest is to lower its costs in concert with lower costs for PWSA customers, Peoples CEO Morgan O'Brien said Tuesday.

Peoples proposed earlier this year to invest \$1 billion to manage PWSA, a suggestion that met with much resistance from city officials and the public, fearing an effort by Peoples to privatize PWSA.

It was clearly "not politically palatable," Mr. O'Brien said, adding that a hearing via the PUC would be the best channel toward a partnership that "keeps PWSA in public hands but provides for lowest combined rates."

He said a public-private partnership could make billing, mapping and customer management more efficient and, "when you dig up the street to replace a water pipe, we could tear up the street together, do it once, and it would be cheaper for both of us and our customers."

Kevin Acklin, Peoples' vice president and chief legal officer, said a conservative estimate of \$165 million savings over nine years would result just in coordinating pipe replacement. Additional savings would come with updated record keeping, he said, adding, "That is money customers would not have to pay."

"We're not trying to pick a fight over what the rates will be," Mr. O'Brien said. "We're asking the PUC to engage with us and PWSA to look at the issue, at whether there is a business case to partner."

Mr. Weimar of PWSA said that the authority employs more than 100 "independent, private sector, international, manufacturers, engineering companies and construction contractors. Our dedicated management team reviews recommendations to improve PWSA's performance from these qualified firms daily. All of this work is now implemented under the State Municipal Authorities Act open and public procurement rules, and in accordance with PUC rules and regulations."

He continued: "We are constantly seeking ways to coordinate infrastructure improvements with City agencies and other utilities to reduce costs. Moreover, we're open to new ideas and strategies from any organization or firm who can help us improve our services and keep rates affordable, while also ensuring we continue to operate for the benefit of the public we serve. PWSA will continue to solicit essential, cost effective, services in an open public process, with independent third party review of our recommendations to PWSA's Board of Directors."

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First Published September 26, 2018 6:00 AM

EXHIBIT B



Peoples Natural Gas sought \$1 billion-plus agreement with PWSA

February 22, 2018 7:30 AM

By Adam Smeltz, Anya Litvak and Rich Lord / Pittsburgh Post-Gazette

The region's biggest natural gas utility floated a pitch worth more than \$1 billion to help restore and manage the troubled Pittsburgh Water and Sewer Authority, trying for months to curry support within Mayor Bill Peduto's administration.

Peoples Natural Gas is among nearly 20 companies that have shown unsolicited interest in fixing up PWSA over the past 18 months, Mr. Peduto said Wednesday, although it's the only firm that confirmed to the Pittsburgh Post-Gazette that it approached the city. Kevin Acklin, the former Peduto chief of staff who dealt with Peoples and other suitors, now works for the North Shore-based gas company.

Mr. Acklin left city hall in January and joined Peoples as vice president and chief legal officer. A lawyer, he said the job offer — and others elsewhere — materialized only after he declared in December his intent to leave the administration.

"My connections to city hall are deep. I would never misuse them," said Mr. Acklin, who vowed not to "take advantage of those relationships."

He said PWSA, and whether Peoples might have an eventual role there, never came up when he discussed a job with the company. Likewise, Mr. Peduto said he sees no conflict in Mr. Acklin's new role. City and state rules ban former public workers from paid lobbying before their prior government employers for at least a year after departure.

Still, PWSA board member Deborah Gross bristled when told about Peoples' contact with the city. Email correspondence obtained by the Post-Gazette shows CEO Morgan O'Brien foreshadowed a forthcoming "indicative offer" to the administration in December 2016, three

months before Mr. Peduto's office announced a public blue-ribbon panel to assess restructuring options for PWSA.

At least two PWSA board members, not including Ms. Gross, helped supply the authority's financial details to Peoples. Ms. Gross also sits on city council.

"I thought we were having really a shared conversation with our public and with our administration, and now it sounds to me that some people were not sharing," she said.

"What is this conversation?" she went on. "I feel I was misled. We were having a public conversation on the future of our water system. And It seems that other people were having a separate, private conversation."

While Peduto spokesman Timothy McNulty declined to respond Wednesday night, Mr. Acklin maintained earlier that "we were very public about the fact that there were numerous conversations underway." He cast as routine a nondisclosure agreement with Peoples that's referenced in administration correspondence.

Generally, Mr. Acklin said, the Peoples proposal was for a partnership under which the company would have assumed roughly \$1 billion in PWSA debt, invested private money in deteriorated infrastructure and kept rates from skyrocketing.

A copy of the plan wasn't immediately available, but the terms could divide future proceeds between Peoples and the PWSA, Mr. Acklin said. Mr. O'Brien confirmed the previously undisclosed overture, saying his company could replace gas and water lines at the same time. Peoples also could employ its call center and billing practices for PWSA accounts, he said.

PWSA has struggled the past few years with customer service, boil-water advisories, broken pipes and lead contamination, among other woes.

"Unasked or uninvited, I made [a] proposal to the mayor that we'd be interested in privatizing or a public-private partnership to try to fix it," Mr. O'Brien said. The company's effort, now effectively dormant, never crossed into negotiations, he said.

Private-sector interest in the city-owned PWSA gained speed in mid-2016, around the time state regulators ordered mandatory replacements of lead service lines, Mr. Acklin said. The Peduto administration assembled the blue-ribbon panel largely to evaluate those expressions of interest and what approaches might work best to strengthen PWSA, he said.

Ms. Gross said such direct offers “would be news to me, and I would certainly like to read them, as a board member and council member.”

The panel chose Infrastructure Management Group of Washington, D.C., to help with the evaluation. Council and the PWSA board agreed to pay the consultant up to \$550,000.

IMG chairman Steve Steckler said his group followed up on eight expressions of interest, including those from Peoples, Pennsylvania American Water Co., Duquesne Light and Aqua Pennsylvania. Pennsylvania American and Duquesne Light representatives said their firms made no formal proposals and that discussions, if they occurred, were of the most general nature.

In a statement, Aqua Pennsylvania said it would “welcome the chance to be part of the solution” at PWSA, but did not confirm an actual offer.

Mr. Peduto and Mr. Acklin maintained that Peoples received no better treatment than any other company that came calling. PWSA board member Paul Leger said he learned about the Peoples talks because he was asked to assemble documents on the authority’s finances and share them with the company.

“All of that is public information, so anyone who would ask for that would get it. They just asked for some basic financial information,” Mr. Leger said. Although “they weren’t the only private company that has expressed interest over the years,” he said, they are the only one for which he pulled together financial details.

Meanwhile, Mr. Peduto reiterated Wednesday his promise to keep PWSA publicly owned. He’s following a panel recommendation in December to restructure board governance at the authority, a process that will likely require approval from city council.

Should the authority pursue help from the private sector, the mayor said, it will follow a “fair and open” process to request formal proposals and evaluate each one.

Mr. O’Brien said Peoples remains interested. Jim Turner, a PWSA board member since May, said he heard only rumors of proposals from private entities. Chaton Turner, who joined the board at the same time, said she didn’t know Peoples had made a concrete offer.

Debbie Lestitian, who chaired the board last year and now serves as the authority’s chief corporate counsel and chief of administration, was not available for comment, according to an

authority spokesman. Robert Weimar, the PWSA interim executive director, said he's focused on keeping PWSA a public agency.

"I have seen nothing," he said of Peoples' overtures, adding that he didn't need to know the details. "I'm sure it's all about trying to help the city with debt and other things, which is notable."

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Peoples still pursuing PWSA, confirms meetings with city council

May 24, 2018 4:00 PM

By Adam Smeltz / Pittsburgh Post-Gazette

Peoples Natural Gas isn't giving up on Pittsburgh's biggest water supplier.

A year after attempting a management deal for the Pittsburgh Water and Sewer Authority, the North Shore-based gas company met privately this month with city council members, Peoples and city officials confirmed Thursday.

The company doesn't want to buy PWSA, but to explore partnership possibilities for infrastructure work in the city, Peoples spokesman Barry Kukovich said. He wasn't certain if Peoples still wants a managerial role at PWSA, he said. CEO Morgan O'Brien wasn't immediately available.

"We want to see [PWSA] be successful. It's important to the city. It's important to us," Mr. Kukovich said. "I think there's so much synergy here. We're in the same trenches. They're repairing lines; we're repairing lines."

Five council members — Anthony Coghill, Deborah Gross, Theresa Kail-Smith, Corey O'Connor and Erika Strassburger — confirmed individual meetings or conversations with Peoples CEO Morgan O'Brien, each held at the company's request. Members said discussions were non-committal and that they remain open to different ideas for strengthening and organizing PWSA, beset by nearly \$1 billion in debt and decades of lackluster upkeep.

Mr. O'Brien "did say that they believe [Peoples] could replace both the gas and water lines simultaneously at a savings to the ratepayers," Mrs. Kail-Smith said.

Her meeting lasted only 10 to 15 minutes, with Mr. O'Brien signaling interest in bidding to work with PWSA, she said. Peoples is the region's biggest natural gas utility.

Mr. O'Connor said his conversation involved how Peoples "could possibly offer assistance to the city." He helped initiate the meeting because he had unrelated matters to discuss, he said.

Mr. Coghill and Ms. Strassburger wouldn't delve into many specifics of Mr. O'Brien's private presentations — "I was told to keep it under tabs for now," Mr. Coghill said — but emphasized that discussions over PWSA will continue. Ms. Gross issued a statement saying in part: "Our water system is not here to generate profits for Wall Street nor for Peoples Gas."

"I think it's really important that we have a very transparent, very public and open process," Ms. Strassburger said. "If any of this is going to be considered by the city, by council members, by the mayor, it has to be open, transparent and very public. That's my first priority, and it has to happen immediately."

Both Mr. O'Connor and Mr. Coghill said they've heard from other private-sector companies — such as Pennsylvania American Water Co. and Aqua Pennsylvania — with interest in PWSA. Pennsylvania American "would welcome the opportunity to talk about solutions" to Pittsburgh's water issues, the firm said in a statement. Aqua didn't immediately comment.

"To me, private industry always functions better than public utilities. Always," Mr. Coghill said. "They're more responsible to customers because they're looking at the bottom line."

He pointed in part to Pennsylvania American, which supplies drinking water to his south Pittsburgh district and adjacent neighborhoods. "They're quite the contrary to PWSA."

High-profile problems including lead contamination, water main failures and boil-water advisories have intensified public scrutiny of PWSA over the past couple years. Lawmakers agreed in 2017 to move the utility under the oversight of the Pennsylvania Public Utility Commission, or PUC.

Meanwhile, Mayor Bill Peduto appointed a blue-ribbon panel explore restructuring options for PWSA. Council is working through how best to reorganize board governance to prevent future failures. A public hearing on that subject has yet to be scheduled.

In a statement, Peduto spokesman Timothy McNulty said the administration "has nothing to do with talks [that] private companies have with council members." The Pittsburgh Post-Gazette reported in February that Peoples tried for months to curry support within the Peduto administration, floating a pitch worth more than \$1 billion to help restore and operate the city-owned water system.

"When it comes to PWSA, we're focused on governance, lead line replacements and orthophosphate," Mr. McNulty said. PWSA plans to introduce the additive this year to better prevent lead contamination.

Mr. Peduto has pledged to maintain public ownership of the water infrastructure, including delivery pipes and a treatment plant in Aspinwall. He hasn't ruled out private-sector involvement as PWSA tackles system needs, projected to top \$2 billion.

Any moves in that vein would follow a "fair and open" process to request and evaluate formal proposals, the mayor has said. Council members on Thursday echoed the desire to retain public ownership. They vary on the idea of private involvement in management, but none reached by the Post-Gazette on Thursday rejected the concept outright.

"It's going to take billions -- not millions but billions of dollars to modernize our plant and the pipes that run through our city," Councilman Ricky Burgess said. Still, "we have to make sure the asset stays in local control. No one is more motivated to protect the residents than us."

At PWSA, Executive Director Robert Weimar said the authority is investing more than \$40 million in 2017 to replace lead service lines and improve anti-lead water treatments. He said the staff is making strides to strengthen the entire organization, which has increased spending for system upgrades.

Meeting expectations under the utility commission will make PWSA equal to — or better than — any other public utility, Mr. Weimar said.

"We are confident we can fulfill the expectations of the citizens, our ratepayers and the PUC," he said.

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Could Peoples Natural Gas become a PWSA competitor for Pittsburgh drinking water?

May 30, 2018 7:44 PM

By Adam Smeltz / Pittsburgh Post-Gazette

Already the region's largest gas utility, Peoples Natural Gas could emerge as a top water supplier, too, under an idea percolating through Pittsburgh City Council.

The North Shore-based company is looking to build an advanced treatment plant on the Allegheny River, from which it could pipe drinking water to neighborhoods served by the Pittsburgh Water and Sewer Authority, Mayor Bill Peduto said Wednesday.

If Peoples can't partner with PWSA, it could develop a parallel network of distribution pipes and offer city water customers a choice: PWSA or the private utility, Mr. Peduto said. Should that scenario become a real possibility, he wants to make sure the city and Peoples "work together instead of working apart," he said.

PWSA is already upgrading the municipal water system, including an aged treatment plant on the Allegheny near Aspinwall, after decades of lackluster upkeep.

"There's no doubt that if PWSA loses customers, the opportunity to create a new water system [as PWSA] will be jeopardized — because you just won't have the base of revenue to be able to borrow the money that you would need," Mr. Peduto told the Pittsburgh Post-Gazette. He maintains the city system should stay publicly owned, even if the city eventually asks the private sector to help overhaul and run it.

At Peoples, spokesman Barry Kukovich confirmed "a new treatment plant is part of the general conversations" as a prospect. He said the company, owned by SteelRiver Infrastructure Partners in Sausalito, Calif., has been "throwing out concepts" about how it might work with PWSA. He wouldn't say where a new plant might be located.

Peoples is among nearly 20 companies that approached the Peduto administration or council members with interest in fixing up the city-owned water system. But Peoples has drawn particular attention after it quietly pursued a pitch last year worth more than \$1 billion to help restore and manage PWSA.

Mr. Peduto's former chief of staff, Kevin Acklin, who fielded inquiries from Peoples on behalf of the administration, joined the company early this year as vice president and chief legal officer. More recently, Peoples executives visited with council members to explore prospects for PWSA.

Whispers about a new treatment plant intensified after several members confirmed speaking with Peoples at the company's request. As recently as this month, Peoples lobbied to replace the city's deteriorating water lines and to assume a leadership role at PWSA, according to sources familiar with the council discussions.

"I think anything is possible at this point. I really do think anything is possible," Mr. Kukovich said, limiting his remarks.

He said the company is "listening to city officials about their needs and ideas regarding PWSA and trying to determine if we can become part of the solution."

Pressed about a motive, Mr. Kukovich said Peoples knows "the healthier we are as a community, the healthier we are as a company."

"We are embedded in this community," he said. "So however we can make it healthy, we will."

Further, the company expects to see savings in joint infrastructure work — that is, restoring both gas and water lines when crews dig up the ground. "We're in the same trenches along with city employees," Mr. Kukovich said.

Council members described their meetings as noncommittal, saying they're open to different ideas for strengthening and organizing PWSA. Most immediately, they're working through proposals to restructure PWSA board governance and prevent future failures. A variety of lead contamination, billing problems and water-main breaks has heightened scrutiny at the authority.

“If there’s ever a way to better service for our constituents and ensure better quality of water, better delivery and better cost, I’m open to the conversation,” Councilman R. Daniel Lavelle said. Peoples has not sought to meet with him, he said.

He and other council members are angling to safeguard public ownership of the water system. PWSA, which leases the infrastructure from the city government, has aired confidence that it can meet both customer expectations and regulatory standards.

“It seems as though the strategy of Peoples Gas is to fake it until you make it — just start saying we’re going to do all this, anyway, so the city may as well negotiate,” said Aly Shaw, organizer at the Our Water Campaign. She dubbed that a “false choice.”

The coalition has urged public control at PWSA. Supporters argue that private companies would siphon profits and keep the city from enjoying “the investment we’re making in our water system right now,” as Ms. Shaw said.

Still, Mr. Peduto said a private-sector partnership could be promising. He has asked PWSA to craft, by summer’s end, a 12-year plan for “a 21st-century water system that will provide the highest-quality water for the next 50 years.”

When that plan is complete, the city and PWSA could solicit private-sector proposals for how best to achieve it, Mr. Peduto said. The process would need to be open and transparent, he said. Board governance changes would need to take effect first, too.

“We have to have an understanding of what it would cost to do [the improvements] ourselves before we can have serious discussion on what others could be able to provide,” Mr. Peduto said. “We also have to be open to the idea that maybe somebody can do it better.”

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First Published May 30, 2018 7:36 PM



Peoples Gas unveils plans for water utility and treatment plant

July 3, 2018 6:00 AM

By Anya Litvak / Pittsburgh Post-Gazette

Morgan O'Brien calls his vision an "obvious strategy" for water customers in Pittsburgh and beyond.

"When you put everything down and people understand it, there's no other solution," he said.

Kicking off a public information campaign Monday, the Peoples Natural Gas CEO unveiled a plan for a new entity to replace the Pittsburgh Water and Sewer Authority as the water utility for Pittsburgh residents and, possibly, for those in neighboring communities.

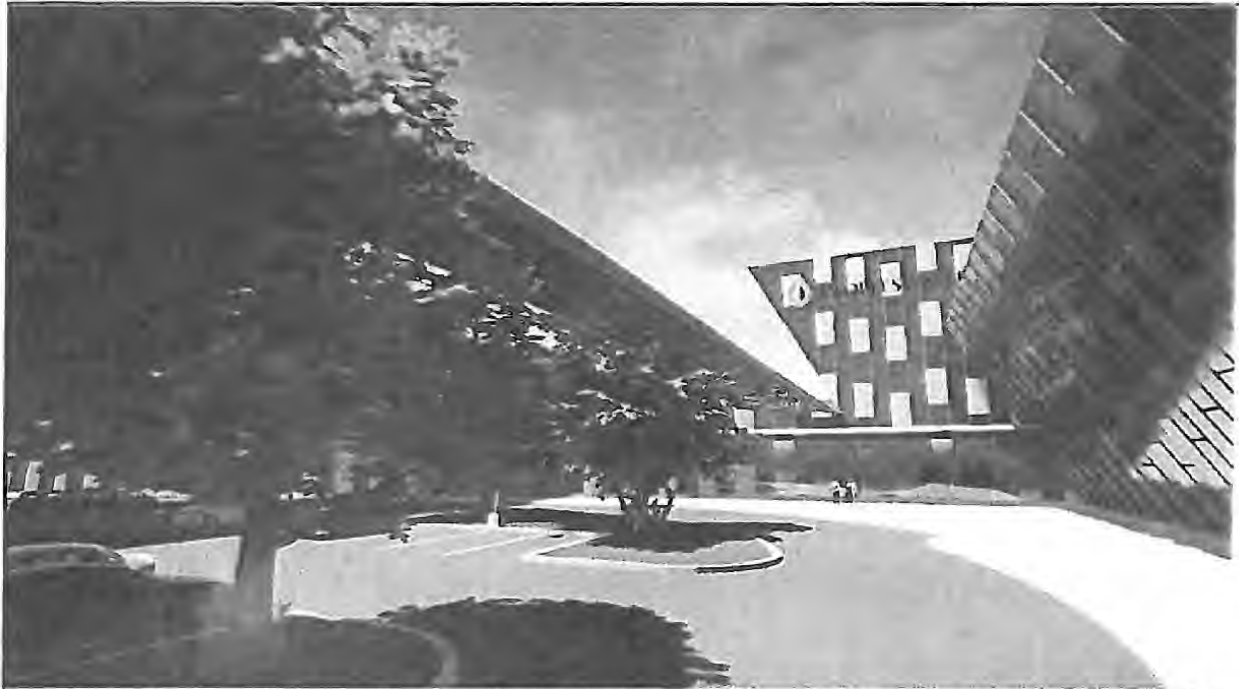
The partnership, as Peoples refers to it, would have a board equally split between public representatives and officials from Peoples Water, a new subsidiary being formed to carry the Peoples' name and interest into its first foray into water utility service.

The water mains and distribution pipes currently in the ground would stay with PWSA, as would all sewer and stormwater infrastructure. But the new entity would begin replacing PWSA pipelines at the same time as Peoples Natural Gas replaces its aging system, a move that Mr. O'Brien said would cut the cost of replacement by half.

The partnership would own the new water pipelines put into the ground, and eventually the entire system would be rebuilt and belong to the partnership.

The centerpiece of the plan, which Mr. O'Brien will present at a hearing Tuesday evening in O'Hara, is a new \$350 million water treatment plant in that township.

“Amazon or the next big company — this will get them excited,” Mr. O’Brien said, gesturing toward a rendering of the proposed facility in a conference room at Peoples headquarters on the North Shore.



The energy for the plant would come from a proposed hydroelectric project and roof-top solar panels, he said, and its water would be 10 times cleaner than what is currently available from the PWSA. He envisioned engineering students from local universities studying in its classroom, school kids taking tours, even weddings hosted on the large green space planned for the roof.

As for who would own it, Mr. O’Brien said it could be the partnership or it could be Peoples Water, which would then lease it to the new water utility.

The details are still being hatched out, he said, and will be guided by feedback Peoples receives during public hearings and open houses planned for July and August.

PWSA, a publicly owned utility with nearly \$1 billion in debt and large infrastructure needs, has been courted by many suitors over the past year. Pennsylvania American Water Co. said Monday that it is interested in acquiring the whole PWSA system, or outright privatizing it, a concept that Mayor Bill Peduto and PWSA officials have said is unacceptable.

It’s unclear how People’s proposal, which isn’t a full privatization but doesn’t maintain 100 percent public control either, will land.

“One hundred percent public means the residents of the city go it alone and have to bear the full cost of that,” said Kevin Acklin, vice president and general counsel at Peoples Natural Gas and former chief of staff to Mr. Peduto.

Mr. O’Brien expects strong public support, in part because the pitch also includes a number of sweeteners. It proposes no rate increases for three years, using the building trades to construct the water treatment plant, committing that one out of every three new hires for the new utility be African-Americans, and supporting low-income customer assistance programs that tackle needs such as housing and medical care, not just utility bills.

“I can’t imagine a scenario where the city says no to us,” Mr. O’Brien said.

Public assets

Peoples Natural Gas is owned by SteelRiver Infrastructure Partners, whose investors are mainly pension and insurance funds. They gravitate toward long-term investments with predictable returns, which makes utilities a great fit.

For Deb Gross, a Pittsburgh city councilwoman and PWSA board member, that dynamic dims the luster of Mr. O’Brien’s proposal.

“I appreciate his painting this pretty picture,” Ms. Gross said. “But I think what the public really needs to understand are what are the details.”

She said she’s unswayed by arguments of private industry efficiency and added that her constituents distrust the profit motive of a private company.

“The call to action is to keep it public,” Ms. Gross said. “These are not assets of investment that are meant to serve shareholders somewhere else.”

PWSA Chairman Paul Leger was similarly unimpressed.

“The [partnership] is a front that is Peoples Gas,” Mr. Leger said.

And the proposed equal split of the board -- with half of its members coming from Peoples and the other half from public entities — is unacceptable, he said, explaining, “You can’t have an even number of people on a board. And why it would be a non-profit is beyond me.”

He thought Peoples would want to sell the new water treatment plant and the replaced pipelines back to the city at some point, rather than co-managing them with Pittsburgh.

Mr. Acklin said that while that's possible, it isn't a requirement. Peoples Water would be just as happy to be a permanent partner in the utility, he said.

Mayor Bill Peduto was unavailable for comment on Monday. His spokesman, Timothy McNulty, said the mayor previously indicated he is waiting until the PWSA presents its long-term strategic plan. Once that's introduced, "he would welcome interest from any firm seeking to assist the authority's efforts."

"Opportunity to repurpose"

In order for Peoples to build a water treatment plant at the site it has selected in O'Hara, beneath the Highland Park Bridge, the company would either need to be certified as a public utility or seek a variance from the zoning code, said O'Hara Township manager Julie Jakubec. Mr. Acklin said Peoples intends to pursue the utility route. It will present its plan to O'Hara council members at 7 p.m. Tuesday.



O'Hara gets its water from three different utilities, Ms. Jakubec said, so the township could end up being a customer of the new plant if it's built.

At twice the capacity of the current PWSA treatment plant, Peoples Water's proposed facility would make obsolete not just PWSA's current treatment plant nearby but also the city's two large reservoirs and a number of small municipal treatment plants in surrounding municipalities.

"The city has the opportunity to repurpose all of that space," Mr. O'Brien said. To that end, Peoples has been confidentially meeting with land developers and has included in its presentation material a schematic of something called "Waterworks Village," a housing development on the site of the current PWSA water treatment plant.

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EXHIBIT C



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