|  |  |  |
| --- | --- | --- |
| PUC logo | COMMONWEALTH OF PENNSYLVANIA  PENNSYLVANIA PUBLIC UTILITY COMMISSION  P.O. BOX 3265, HARRISBURG, PA 17105-3265 | **IN REPLY PLEASE REFER TO OUR FILE**  Docket Nos.  M-2018-2640802  (water)  M-2018-2640803  (wastewater) |

**November 27, 2018**

**ASSIGNMENT OF THE PITTSBURGH WATER AND SEWER AUTHORITY**

**COMPLIANCE PLAN TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE**

This Secretarial Letter assigns the Pittsburgh Water and Sewer Authority (PWSA) Compliance Plan at the above-referenced dockets from the Commission’s Bureau of Technical Utility Services to its Office of Administrative Law Judge (OALJ). This assignment moves the Compliance Plan from initial technical staff review to an on-the-record contested proceeding whereby PWSA and interested persons may litigate and develop issues for Commission consideration in a final compliance plan.

In addition, this Secretarial Letter establishes two stages of review for the PWSA Compliance Plan. For Stage 1, the Commission directs PWSA and its stakeholders to prioritize health and safety issues over other matters that, while important, are not as urgent as those related to the safe, adequate, reliable, and reasonable provision of water service and the revenues necessary to support adequate water quantity and quality. For Stage 2, the focus will be on Chapter 56 billing and collection issues and development of a storm water tariff.

**Background**

On March 15, 2018, the Commission entered its Final Implementation Order (FIO) at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater) in a consolidated proceeding to establish the procedures by which the Commission would implement Chapter 32 of the Public Utility Code commencing on April 1, 2018. That Chapter provides for Commission oversight of the PWSA as if it were a public utility, subject to certain Code exemptions.

The FIO also established a due date of September 28, 2018, for the filing of a Compliance Plan and a Long-Term Infrastructure Improvement Plan (LTIIP) based on the 180-day filing deadline of 66 Pa. C.S. § 3204. Chapter 32 does not provide express procedures under which the Commission is to conduct its review of the PWSA Compliance Plan and LTIIP. On September 26, 2018, the Commission issued a Secretarial Letter at the above-referenced dockets providing the procedures under which the Commission would conduct its review. PWSA timely filed its Compliance Plan and LTIIP on September 28, 2018.

Regarding the PWSA LTIIP filings, the Commission determined to employ standard procedures developed for LTIIPs filed pursuant to 66 Pa. C.S. § 1352. While currently under way, the September 26 Secretarial Letter provided that the LTIIP review was subject to consolidation with Commission review of the Compliance Plan upon motion.

Regarding the PWSA Compliance Plan, the September 26 Secretarial Letter directed that notice of the filing of the Compliance Plan and the procedures outlined therein be published in the Pennsylvania Bulletin on October 13, 2018, which occurred. The Secretarial Letter also provided interested persons with the opportunity to file comments in anticipation of the assignment of the Compliance Plan to OALJ and to inform preliminary Commission review of the Plan, discussed below. The September 26 Secretarial Letter directed that, no later than forty-five (45) days after Pennsylvania Bulletin publication, the Commission would assign the PWSA Compliance Plan to OALJ for the resolution of any factual matters.

The Commission also directed that technical staff submit with the referral to OALJ an initial report consisting of directed questions or issue areas that PWSA and interested parties are to address. The list is attached to this Secretarial Letter as “Technical Staff Initial Report and Directed Questions Stage 1.”

**Comments**

Two stakeholders filed initial comments to the Compliance Plan: Pittsburgh United (United) and the Office of Consumer Advocate (OCA). The Technical Staff Initial Report and Directed Questions (Initial Report) addresses many of the issues raised by the OCA and United. The Commission will not reiterate those issues here as they are contained in the attached Initial Report.

Much of United’s comments focus on billing issues related to Chapter 56 of the Commission’s regulations and Chapter 14 of the Public Utility Code. United includes a multi-page table of billing issues and offers that these are merely its initial list of its most pressing suggestions. United at 7-9. The OCA comments that it does not agree with PWSA regarding PWSA’s compliance with the Commission’s Chapter 56 billing regulations. OCA at 3-5. These issues are among many addressed in the Compliance Plan.

United also notes the difficulty engendered by Chapter 32 of the Public Utility Code whereby the Commission is directed to conduct concurrent rate and compliance plan proceedings. United at 17-18. The Commission notes that there is no need to address the full scope of PWSA regulatory compliance in one fell swoop. As the September 26 Secretarial Letter pointed out, 66 Pa. C.S. § 3204(b) and (c), do not require the Commission to adhere to specific procedures to address the required PWSA Compliance Plan review. Similarly, neither Chapter 32 nor the remainder of the Public Utility Code establish a deadline by which the Commission must complete its review of these filings.

**Staged Review**

A primary challenge for PWSA, its stakeholders, and the Commission, is that of prioritization of the many issues presented. The PWSA transition from regulation under the Municipal Authorities Act to regulation under the Public Utility Code requires a broad and complex reconfiguration of PWSA management and operations to ensure safe, adequate, and reliable service at just and reasonable rates. In addition, PWSA is transitioning from oversight by the Allegheny County Health Department to a more direct regulatory relationship with the Department of Environmental Protection (DEP). As to regulated public water and wastewater service, the Commission and DEP are State agencies jointly charged with the protection of fundamental aspects of public health and safety. The procedure established here reflects the challenges of the PWSA transition and a harmonization of the joint regulatory roles of DEP and the Commission.

The PWSA Compliance Plan explains that DEP and PWSA management agree that PWSA faces myriad challenges as it works to correct years of delayed infrastructure investment, maintenance, revenue management, and customer service. The Commission is likewise concerned about these issues and others addressed in the Initial Report. It is apparent that the Pittsburgh region served by PWSA needs more than a successful outcome regarding the Compliance Plan. PWSA must achieve successful compliance *action* on all fronts if it is to continue to meet its service obligations consistent with the public interest. The Commission believes that part of the statutory mandate of 66 Pa. C.S. § 3204(b) is to ensure that its procedures and processes facilitate focused and immediate attention to those issues that are both important and urgent.

To that end, the Commission has determined to stage its review of the Compliance Plan. Litigation concerning Stage 1 will commence on November 27, 2018, with the assignment of the Compliance Plan to OALJ along with the attached Initial Report. Stage 1 is directed toward urgent infrastructure remediation and improvement, and the revenue and financing requirements of maintaining service that supports public health and safety. Stage 2 will address important PWSA billing issues and the development of a proposed PWSA stormwater tariff.

In other words, Stage 1 of the Commission’s review will address all issues except for PWSA’s compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations and the development of a PWSA stormwater tariff, which are reserved for the second stage. Litigation of Stage 2 issues will commence after the issuance of a Commission order on Stage 1 issues in late 2019. To be clear, metering and related revenue issues will be addressed immediately regardless of their connection to billing practices.

The Commission acknowledges that it has not yet received a Recommended Decision, exceptions, or settlement proposal on the pending PWSA rate proceedings at Docket Nos. R-2018-3002645 and R-2018-3002647. To the extent that perceived conflicts may arise between the PWSA rate proceeding and the staged litigation of the PWSA Compliance Plan the Commission will entertain resolution of those conflicts by motion or petition within Stage 1 of the Compliance Plan.

In the Commission’s judgment, conducting staged litigation has benefits other than providing priority to issues that are both important and urgent. Stakeholders will remain free to engage informally with Commission staff on billing and stormwater issues over the next year outside of the formal hearing process. In addition, the Commission expects that PWSA will continue to work cooperatively with stakeholders to adapt its practices to obtain full compliance with applicable statutes and Commission regulations.

**Billing and Stormwater Tariff Workshops**

To facilitate a goal of continuous compliance improvement, the Commission hereby directs its Bureau of Consumer Services (BCS) to conduct quarterly workshops in 2019 for the benefit of PWSA, stakeholders and the Commission. Like the Initial Report included here, the focus of the BCS workshops will be the development of an initial report and directed questions regarding PWSA compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations for use in Stage 2 of Commission review of the PWSA Compliance Plan. Stakeholders are assured that the Commission’s informal and formal complaint process are available should the need arise for immediate attention to any Stage 2 issue. The BCS workshops are to commence after Commission issuance of a final order in the above-referenced PWSA rate proceedings.

Likewise, the Commission’s Bureau of Technical Utility Services (TUS) will conduct a stormwater tariff workshop in 2019 for the benefit of PWSA, stakeholders, and the Commission. TUS will develop an initial report and directed questions regarding a PWSA proposed stormwater tariff for use in Stage 2 of Commission review of the PWSA Compliance Plan.

**Referral to Office of Administrative Law Judge**

Consistent with the direction of this Secretarial Letter and the September 26, 2018 Secretarial Letter, OALJ is hereby directed to incorporate the Stage 1 Initial Report into its Prehearing Order and to conduct evidentiary hearings to address matters raised therein. Per the September 26, 2018 Secretarial Letter, the OALJ will issue a recommended decision on the matters raised in Stage 1 no later than eight (8) months from the date of this Secretarial Letter, May 27, 2019.

Parties may submit exceptions within twenty (20) days of the recommended decision and reply exceptions no later than fifteen (15) days thereafter. The Commission will issue appropriate orders on the filings no later than November 30, 2019 and will issue further guidance regarding Stage 2 of its review shortly thereafter.

**** Sincerely,

# Rosemary Chiavetta

Secretary