

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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December 11, 2018

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

Re: Implementation of Chapter 32 of the Public
Utility Code Re Pittsburgh Water and Sewer
Authority
Docket Nos. M-2018-2640802 (water)
M-2018-2640803 (wastewater)

Dear Secretary Chiavetta:

Attached for electronic filing, please find the Office of Consumer Advocate's Petition for Clarification and Reconsideration in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lauren M. Burge".

Lauren M. Burge
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Enclosures:

cc: Honorable Mark A. Hoyer
Honorable Conrad A. Johnson
Certificate of Service
*263550

CERTIFICATE OF SERVICE

Re: Implementation of Chapter 32 of the : Docket Nos. M-2018-2640802 (w)
Public Utility Code Re. Pittsburgh : M-2018-2640803 (ww)
Water and Sewer Authority :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Petition for Clarification and Reconsideration, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 11th day of December 2018.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. M-2018-2640802 (Water)
	:	M-2018-2640803 (Wastewater)
Pittsburgh Water and Sewer Authority	:	

PETITION OF THE
OFFICE OF CONSUMER ADVOCATE
FOR CLARIFICATION AND RECONSIDERATION

The Office of Consumer Advocate (OCA) hereby submits this Petition pursuant to the Pennsylvania Public Utility Commission’s (Commission) Corrected Secretarial Letter issued November 28, 2018 (November Secretarial Letter) regarding Assignment of the Pittsburgh Water and Sewer Authority Compliance Plan to the Office of Administrative Law Judge. The OCA requests that the Commission reconsider the timeline for review of the Pittsburgh Water and Sewer Authority’s (PWSA or the Authority) Compliance Plan as outlined in the November Secretarial Letter. The OCA further requests clarification as to the scope of issues to be addressed in this proceeding. Given the short timeframes in this proceeding, the OCA requests expedited treatment of this Petition.

I. INTRODUCTION

On December 21, 2017, Governor Wolf signed Act 65 of 2017 into law. Act 65 amended the Public Utility Code by adding new language to 66 Pa. C.S. § 1301 and creating a new Chapter 32, which has the effect of bringing PWSA under the Commission’s jurisdiction. On March 15, 2018, the Commission issued a Final Implementation Order (FIO) laying out a process for implementing Chapter 32, including tariff approval, ratemaking, compliance plan, and assessment

provisions.¹ On September 26, 2018, the Commission issued a Secretarial Letter regarding the Procedure for Commission Review of the September 28, 2018 Compliance Plan and LTIIP Filings of the Pittsburgh Water and Sewer Authority (September Secretarial Letter). The September Secretarial Letter provided a process for review of PWSA's Compliance Plan, including publication in the *Pennsylvania Bulletin*, assignment to the Office of Administrative Law Judge (OALJ) by Secretarial letter, the issuance of a Recommended Decision within eight (8) months of assignment to OALJ, and a final Commission Order no later than November 30, 2019. September Secretarial Letter at 3. PWSA filed its Compliance Plan and LTIIP on September 28, 2018 in accordance with Act 65 and the FIO.

On November 28, 2018, the Commission issued the November Secretarial Letter and the accompanying Technical Staff Initial Report and Directed Questions – Stage 1. The November Secretarial Letter assigned PWSA's Compliance Plan to OALJ for hearings as contemplated in the September Secretarial Letter, but also established a new two stage review process for PWSA's Compliance Plan. The November Secretarial Letter directs PWSA and the parties to address “urgent infrastructure remediation and improvement, and the revenue and financing requirements of maintaining service that supports public health and safety” as part of Stage 1, while Stage 2 will focus on “important PWSA billing issues and the development of a proposed PWSA stormwater tariff.” November Secretarial Letter at 3. Litigation in Stage 2 would not begin until after a final Commission Order is issued in Stage 1 in late 2019. *Id.* at 3-4. Further, the Technical Staff Initial Report and Directed Questions lists a variety of specific questions that PWSA and the parties are directed to address as part of the Stage 1 litigation.

Simultaneously, PWSA currently has pending water and wastewater base rate

¹ Implementation of Chapter 32 of the Public Utility Code, Final Implementation Order, Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater) (Order entered Mar. 15, 2018).

proceedings.² On November 29, 2018, the parties to the base rate proceedings filed a Joint Petition for Settlement (Settlement), which includes detailed settlement terms as well as specific items and timeframes for addressing a variety of outstanding issues as part of the Compliance Plan proceeding.

II. RECONSIDERATION

The OCA respectfully requests that the Commission reconsider its directive to utilize a two stage review process for PWSA's Compliance Plan. While the OCA appreciates the concept of prioritizing issues affecting public health and safety in Stage 1, the OCA submits that many provisions of Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations directly affect the health and safety of residential customers. For example, compliance with termination requirements is important to prevent customers from improperly losing access to essential water and wastewater service. Losing access to utility service has significant public health and safety ramifications, but under the November Secretarial Letter, this type of issue would not be addressed until at least the end of 2020 when a final order is issued in Stage 2. Further, issues related to uncollectibles would be delayed until Stage 2, even though PWSA's level of uncollectibles is directly related to "the revenue and financing requirements of maintaining service that supports public health and safety." November Secretarial Letter at 3. In short, there is significant overlap and interplay between the issues the Commission has directed the parties to address in two separate stages. Attempting to separate connected issues into two separate stages would unnecessarily complicate the parties' review of these compliance areas, and would result in important issues being left unaddressed for at least another two years.

Additionally, the parties to PWSA's currently pending base rate proceedings have devoted

² Pa. P.U.C. v. Pittsburgh Water and Sewer Authority, Docket Nos. R-2018-3002645 (water) and R-2018-3002647 (wastewater).

significant time and resources to carefully crafting a Settlement that addresses PWSA's tariff filings and rate increase requests. The Settlement includes terms that identify specific items that will be addressed in PWSA's Compliance Plan proceeding and/or its next base rate case, as well as timelines and collaborative processes for investigating many areas where PWSA may not be in compliance with applicable laws and regulations. The timelines included in the November Secretarial Letter, which was issued just one day before the Settlement was filed, appear to conflict with many of the Settlement terms negotiated by the parties. For example, the FIO requires PWSA to file a stormwater tariff no later than its next wastewater base rate filing. FIO at 31. In anticipation of this deadline, the Settlement provides that PWSA will "propose a plan/method for developing separate cost of service studies for wastewater and stormwater for the development of stormwater rates" that will be investigated as part of the Compliance Plan proceeding. Settlement ¶ III.G.1.b.i.(a). The November Secretarial Letter, however, pushes consideration of stormwater issues into Stage 2 of the Compliance Plan, and thus there will not be a final Commission Order on this issue until the end of 2020 at the earliest. Given that PWSA may seek to file its next wastewater base rate case before 2021, it will be very difficult for PWSA to comply with the timelines and commitments in the FIO, the Settlement, and the November Secretarial Letter.

Given these concerns, the OCA respectfully requests that the Commission reconsider its directive to address PWSA's Compliance Plan in a two stage process. The OCA submits, rather, that Commission should allow the parties additional time to investigate the Compliance Plan in one step rather than splitting the issues into two stages. The November Secretarial Letter specifically notes that neither Chapter 32 nor any other Commission regulations require specific procedures for review of the compliance plan, and there is no mandated deadline by which the Commission must complete its review. November Secretarial Letter at 2-3. Rather than requiring

a Recommended Decision within eight months of assignment to OALJ on Stage 1 issues, the Commission may instead give the parties 12 to 14 months to fully investigate and litigate the entire Compliance Plan on all issues, including all those in Stage 1 and Stage 2. This would allow adequate time to address these complex and interrelated issues and would avoid excessive delay in addressing important issues related to billing and termination, consumer protections, and development of a stormwater tariff.

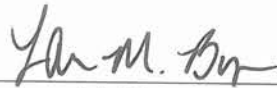
III. CLARIFICATION

The OCA requests clarification as to the scope of issues to be addressed in the Compliance Plan. The Technical Staff Initial Report and Directed Questions lists a variety of specific questions that PWSA and the parties are directed to address. However, the OCA and other parties may identify other important issues or deficiencies with PWSA's Compliance Plan that have not been included in the Technical Staff Report. For example, the Settlement includes a detailed list of items to be addressed in the Compliance Plan. See Settlement ¶ III.H. The OCA's November 2, 2018 Comments regarding PWSA's Compliance Plan also identify a variety of plan deficiencies and areas that must be further investigated as part of the Compliance Plan proceeding. The OCA respectfully requests that the Commission clarify that PWSA and the parties are permitted to address all issues they may identify relevant to the Compliance Plan, which include but is not limited to the issues and directed questions listed in the Technical Staff Report. This will ensure that the parties are able to fully investigate and address PWSA's compliance with all applicable Commission regulations.

IV. CONCLUSION

For these reasons, the OCA respectfully requests that the Commission reconsider and clarify the November 28, 2018 Corrected Secretarial Letter as set forth above. Further, the OCA requests that the Commission review this Petition on an expedited basis given that the litigation of PWSA's Compliance Plan is currently proceeding on a short timeframe.

Respectfully Submitted,



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