



VIA EFILE

December 19, 2018

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17105

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

Dear Secretary Chiavetta,

Enclosed for filing, please find the **Prehearing Memorandum of Pittsburgh UNITED**. A copy has been served on all parties of record to this proceeding consistent with the enclosed Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Elizabeth R. Marx".

Elizabeth R. Marx
Counsel for Pittsburgh UNITED

CC: Hon. Mark A. Hoyer (ALJ)
Hon. Conrad A. Johnson (ALJ)
Certificate of Service

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Chapter 32 of the	:	Docket No.	M-2018-2640802
Public Utility Code Re Pittsburgh	:		M-2018-2640803
Water and Sewer Authority	:		

PREHEARING MEMORANDUM OF

PITTSBURGH UNITED

PENNSYLVANIA UTILITY LAW PROJECT

Counsel for Pittsburgh UNITED

Elizabeth R. Marx, Esq.

John W. Sweet, Esq.

Patrick M. Cicero, Esq.

Kadeem G. Morris, Esq.

118 Locust Street

Harrisburg, PA 17101

Tel.: 717-236-9486

Fax: 717-233-4088

Email: pulp@palegalaid.net

December 19, 2018

I. INTRODUCTION

On December 7, 2018, a Prehearing Conference Order was issued by Administrative Law Judges Mark A. Hoyer and Conrad A. Johnson, setting a prehearing conference for Thursday, December 20, 2018 at 10:00 a.m., and requiring parties to file a Prehearing Memorandum no later than Wednesday December 19, 2018 at 2:00 p.m. Pittsburgh UNITED, through its counsel at the Pennsylvania Utility Law Project, hereby submits this Prehearing Memorandum in accordance with that order.

II. HISTORY OF THE PROCEEDING

On September 28, 2018, PWSA filed a Petition with the Commission for approval of its Compliance Plan, which it filed pursuant to section 3204(b)-(c) of the Public Utility Code. (66 Pa. C.S. § 3204(b)-(c)). Two days prior to PWSA's filing, on September 26, 2018, the Commission issued a Secretarial Letter setting forth the process for review of PWSA's Compliance Plan. In relevant part, the Secretarial Letter explained that the Commission would publish notice of PWSA's Compliance Plan and the procedures related thereto in the Pennsylvania Bulletin on October 13, 2018. (Sep. 26 Sec. Ltr. at 2; 48 Pa.B. 6635). The Commission further provided for a comment period of 20 days from the date of publication in the Pennsylvania Bulletin. (*Id.*) Moreover, the Commission provided that within 45 days from the date of publication in the Pennsylvania Bulletin, it would refer PWSA's Compliance Plan by Secretarial Letter to the Office of Administrative Law Judge "for the resolution of any factual matters that PWSA or interested parties may seek to develop." (*Id.* at 3).

On November 1, 2018, Pittsburgh UNITED filed Comments in response to PWSA's Compliance Plan, pursuant to the Commission's September 26 Secretarial Letter. These comments identified various issues in PWSA's Compliance Plan with respect to its compliance with statutory

and regulatory provisions in Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations and prevailing public policy governing customer billing, collections, and terminations; compliance with the Discontinuance of Service to Leased Premises Act (DSLPA) and the Utility Service Tenants Rights Act (USTRA); PWSA's provision of universal service programs to low income consumers; and PWSA's lead remediation program. (See Cmts. of Pittsburgh UNITED, filed Nov. 1, 2018).

Also on November 1, 2018, Pittsburgh UNITED filed a Petition to Intervene, seeking full intervenor status in the pending Compliance Plan proceeding and identifying preliminary issues that it intends to pursue in the context of the fully litigated proceeding.

On November 28, 2018, the Commission issued a Secretarial Letter, which established a two-stage evidentiary process to examine issues related to PWSA's Compliance Plan. (Nov. 28 Sec. Ltr). The Commission explained how it intends for issues to be divided between the two stages as follows:

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.* ... To be clear, metering and related revenue issues will be addressed immediately regardless of their connection to billing practices.

(Id. at 3 (emphasis added)).

Also on November 28, 2018, the Commission released its Stage 1 Staff Report, which was attached to the November 28 Secretarial Letter. This report "consist[s] of directed questions or issue areas that PWSA and interested parties are to address." (Nov. 28 Sec. Ltr. at 2).

On December 6, 2018, parties received notice that a telephonic Pre-hearing Conference was scheduled in the Stage 1 proceeding for Thursday, December 20, 2018. On December 7, 2018, parties received a Prehearing Conference Order, which required parties to the proceeding to file a Prehearing Memorandum on or before December 19, 2018 at 2:00 pm.

On December 11, 2018, the Office of Consumer Advocate (OCA) filed a Petition for Reconsideration and Clarification requesting, in relevant part, that the Commission reconsider its two-stage approach to PWSA's Compliance Plan review. OCA's Petition requested that the Commission provide additional time for litigation of PWSA's full Compliance Plan in a single proceeding, and requested clarification from the Commission that the parties be permitted to raise additional issues which were not otherwise expressly identified by the Commission in the Stage 1 Staff Report.

Pittsburgh UNITED also filed a Petition for Reconsideration and Clarification on December 11, 2018 in support of OCA's requested reconsideration and clarification. To the extent OCA's Petition is not granted, Pittsburgh UNITED's Petition also sought to clarify that (1) parties to the Stage 1 proceeding be permitted to raise additional issues that were not otherwise identified in the November 28 Secretarial Letter or Stage 1 Staff Report which do not otherwise pertain to PWSA's Chapter 14/56 Compliance or the creation of a stormwater tariff; and (2) issues related to PWSA's compliance with the Discontinuance of Service to Leased Premises Act (DSLPA) and the Utility Tenants Service Rights Act (USTRA) be addressed in Stage 1. The OCA and Pittsburgh UNITED's Petitions are currently pending before the Commission.

Finally, on December 14, 2018, PWSA filed a Motion for Consolidation of PWSA's Compliance Plan and Long-Term Infrastructure Improvement Plan (LTIIP), which also remains

pending before the Commission.¹ Pittsburgh UNITED previously filed Comments to PWSA's LTIIP on October 29, 2018 pursuant to the Commission's regulations governing LTIIP filings. See 52 Pa. Code § 121.4(c).

III. ISSUES TO BE ADDRESSED

Counsel for Pittsburgh UNITED has preliminarily reviewed PWSA's Compliance Plan, and identified a number of issues which it intends to explore more fully in the litigated portion of this proceeding. Consistent with the commitments of the parties in the Joint Petition for Settlement in PWSA's rate case currently pending before the PUC,² the directives contained in the Commission's November 28, 2018 Secretarial Letter and Stage 1 Staff Report, Pittsburgh UNITED intends on pursuing the following issues in Stage 1 of this proceeding:

- i. Whether revisions to PWSA's low income assistance programs are necessary to ensure that economically vulnerable consumers are able to afford and maintain water and wastewater services, consistent with Commission policy regarding Customer Assistance Programs, 52 Pa. Code § Ch. 69, and other Commission standards and requirements for the provision of universally available public utility services.
- ii. Whether PWSA's policies and practices regarding the provision of service to tenant-occupied properties are adequate to appropriately protect tenants from the loss of utility service, consistent with DSLPA, and whether PWSA must continue to adhere to the similar requirements for municipal water authorities contained in USTRA; and

¹ PWSA's LTIIP was filed contemporaneously with its Compliance Plan on September 28, 2018, and the Commission indicated in its September 26 and November 28 Secretarial Letters that it would entertain a Motion for Consolidation of the two proceedings. See Petition of Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan, Docket Nos. P-2018-3005037, -3005039; see also Sept. 26 and Nov. 28 Sec. Ltrs. Pittsburgh UNITED supported consolidation of the two proceeding in Comments, which were filed on October 29, 2018 pursuant to 52 Pa. Code § 121.4(c).

² See Pa. PUC v. PWSA, Docket Nos. R-2018-3002645, -3002647, Joint Petition for Settlement (filed Nov. 29, 2018).

- iii. Whether PWSA's lead remediation program is adequately designed and appropriately administered to ensure that PWSA is providing safe drinking water to its customers, protecting vulnerable consumers from the serious and substantial health outcomes which result from exposure to lead, and doing so in a cost effective manner.

If Pittsburgh UNITED and OCA's respective Petitions for Reconsideration are granted, and the Compliance Plan is addressed in a single proceeding, Pittsburgh UNITED will also address the following issues:

- i. Whether PWSA's billing, collections, and termination policies and practices are consistent with the requirements of Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations.
- ii. Whether PWSA's plans associated with the development of a stormwater tariff are appropriate and consistent with Commission regulations and policies.

A more detailed list of sub-issues to each of the broader issues identified above is contained in the Joint Petition for Settlement that is currently pending approval in PWSA's base rate proceeding.³ In the Joint Petition, several specific issues were preserved for litigation in the context of this proceeding, and Pittsburgh UNITED intends to pursue each of those issues as they pertain to the broader issues identified above.

In addition, Pittsburgh UNITED anticipates that other issues may arise as a more comprehensive review of PWSA's filing is undertaken, discovery is conducted, and other parties present evidence and testimony. Pittsburgh UNITED reserves the right to present evidence on any of the other issues contained in PWSA's filing but not specifically identified above, and to respond to issues raised by other parties.

³ See Pa. PUC v. PWSA, Docket Nos. R-2018-3002645, -3002647, Joint Petition for Settlement, at 24-29 (filed Nov. 29, 2018).

IV. WITNESSES

Pittsburgh UNITED intends to present the following witness to testify in this matter, but reserves the right to call additional or substitute witnesses as may be warranted upon proper notice to Your Honor and the parties:

Mitchell Miller
Mitch Miller Consulting LLC
60 Geisel Road
Harrisburg, PA 17112
717-903-2196
Mitchmiller77@hotmail.com

Mr. Miller will provide testimony regarding PWSA's low income programming and its compliance with DSLPA/USTRA. To the extent that the Petitions for Reconsideration and Clarification of OCA and Pittsburgh UNITED are granted, Mr. Miller will also address issues related to PWSA's compliance with Chapters 14 and 56.

Pittsburgh UNITED is also in the process of identifying one or more expert witnesses to testify about PWSA's lead remediation program, the dangers of lead contamination, and the effectiveness of PWSA's programs on serving Pittsburgh's low- and moderate-income households. And, to the extent that the Petitions of OCA and Pittsburgh UNITED are granted, Pittsburgh UNITED may present a witness to testify about PWSA's stormwater tariff and related stormwater programming. If additional witnesses are identified, Pittsburgh UNITED will notify the parties and the ALJs in advance of presenting their testimony.

With respect to the presentation of expert testimony, Pittsburgh UNITED also notes that, in an effort to conserve resources and prevent unnecessary duplication, it may rely on portions of expert testimony admitted to the record in PWSA's base rate proceeding. As this proceeding progresses, Pittsburgh UNITED will assess the extent to which that evidence remains relevant, and may accordingly limit its presentation of additional expert testimony in this proceeding. Moreover,

Pittsburgh UNITED submits that a number of issues in this proceeding present legal questions which do not require the presentation of additional facts. Indeed, the heart of the proceeding is to determine whether PWSA's policies, practices, programs, and procedures are compliant with all applicable laws and policies. Thus, where a legal question is at issue, Pittsburgh UNITED reserves the right to address that issue through briefing, without the presentation of expert witness testimony.

V. DISCOVERY

Pittsburgh UNITED supports the standard discovery modifications proposed by OCA in its Prehearing Memorandum.

VI. SETTLEMENT

Pittsburgh UNITED is ready and willing to work with any and all of the other parties in this proceeding in an attempt to come to a full or partial settlement of the litigated issues.

VII. SERVICE ON PITTSBURGH UNITED

Service on Pittsburgh UNITED may be made on its attorneys at the Pennsylvania Utility Law Project as follows:

Elizabeth R. Marx, Esq.
John W. Sweet, Esq.
Patrick M. Cicero, Esq.
Kadeem G. Morris, Esq.
PENNSYLVANIA UTILITY LAW PROJECT
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

Pittsburgh UNITED requests that parties serve one hard copy in addition to an electronic copy of all documents served in this proceeding.

VIII. LITIGATION SCHEDULE

Pittsburgh UNITED has actively engaged in discussions with PWSA and other parties in an attempt to reach an agreement on a litigation schedule. Unfortunately, as of the time of this filing, the parties have been unable to reach an acceptable agreement that would provide adequate time for the intervening parties to submit direct testimony in this proceeding. Thus, Pittsburgh UNITED supports the proposed schedule of the Commission's Bureau of Investigation and Enforcement (I&E). In short, Pittsburgh UNITED agrees with I&E that it would be prejudicial to the intervening parties to provide fewer than 60 days to investigate and develop written direct testimony in response to PWSA's revised Compliance Plan and Direct Testimony. Pittsburgh UNITED remains open to potential alternatives, provided the timeframe for intervenors to file direct testimony is not constrained.

Pittsburgh UNITED notes that the pending Petitions for Reconsideration and Clarification of OCA and Pittsburgh UNITED may have a bearing on the procedural schedule. If granted, those Petitions would both expand the scope of this proceeding and provide additional time for litigation. Pittsburgh UNITED suggests that it would be prudent to hold an additional prehearing conference to amend the proposed schedule if and when Pittsburgh UNITED and OCA's Petitions are granted. However, the pendency of those Petitions should not be used as a factor in developing a litigation schedule unless or until the Petitions are granted.

IX. CONCLUSION

Pittsburgh UNITED respectfully requests that its Prehearing Memorandum be entered into the record of this proceeding.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
Co-Counsel for Pittsburgh UNITED

A handwritten signature in blue ink, appearing to read "Elizabeth R. Marx".

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

Date: December 19, 2018

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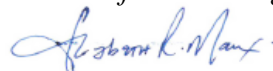
I hereby certify that I have this day served copies of the **Prehearing Memorandum of Pittsburgh UNITED** upon the parties of record in the above-captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

VIA FIRST CLASS MAIL AND/OR EMAIL

The Honorable Mark A. Hoyer Deputy Chief Administrative Law Judge Piatt Place, Suite 220 301 Fifth Avenue Pittsburgh, PA 15222 mhoyer@pa.gov	The Honorable Conrad A. Johnson Administrative Law Judge Piatt Place, Suite 220 301 Fifth Avenue Pittsburgh, PA 15222 cojohnson@pa.gov
Daniel Clearfield, Esq. Deanne M. O'Dell, Esq. Karen O. Moury, Esq. Carl R. Schultz, Esq. 213 Market Street, 8 th Floor Harrisburg, PA 17101 dclearfield@eckertseamans.com cshultz@eckertseamans.com dodell@eckertseamans.com kmoury@eckertseamans.com	Christine M. Hoover, Esq. Lauren M. Burge, Esq. Erin L. Gannon, Esq. Office of Consumer Advocate 555 Walnut Street 5th Floor, Forum Place Harrisburg, PA 17101 OCAPWSA2018@paoca.org Choover@paoca.org lburge@paoca.org egannon@paoca.org
Gina L. Miller, Esq. John M. Coogan, Esq. Bureau of Investigation and Enforcement 400 North Street 2nd Floor West Harrisburg, PA 17120 ginmiller@pa.gov jcoogan@pa.gov	Debbie Marie Lestitian, Esq. Pittsburgh Water and Sewer Authority Penn Liberty Plaza 1 1200 Penn Avenue Pittsburgh, PA 15222 dlestitian@pgh2o.com
Susan Simms Marsh, Esquire Pennsylvania-American Water Company 800 West Hersheypark Drive Hershey, PA 17033 susan.marsh@amwater.com	Michael A. Gruin, Esquire Stevens & Lee 17 North Second Street, 16th Floor Harrisburg, PA 17101 mag@stevenslee.com

Sharon Webb, Esq. Erin K. Fure, Esq. Office of Small Business Advocate 300 North Second Street, Suite 202 Harrisburg, PA 17101 efure@pa.gov swebb@pa.gov	Robert A. Weimar Pittsburgh Water and Sewer Authority Penn Liberty Plaza 1200 Penn Ave Pittsburgh, PA 15222
Tishekia Williams, Esq. Michael Zimmerman, Esq. Emily M. Farah, Esq. Duquesne Light Company 411 Seventh Ave., 15 th Floor Pittsburgh, PA 15219 Twilliams@duqlight.com mzimmerman@duqlight.com efarah@duqlight.com	Pamela C. Polacek, Esq. Adeolu A. Bakare, Esq. Alessandra L. Hylander, Esq. McNees, Wallace & Nurick, LLC 100 Pine Street PO Box 116 Harrisburg, PA 17108 ppolacek@mcneeslaw.com abakare@mcneeslaw.com ahylander@mcneeslaw.com
David P. Zambito, Esq. Cozen O'Conner 17 North Second Street, Suite 1410 Harrisburg, PA 17101 dzambito@cozen.com	Michelle Narccatati Chapkis Mayor's Blue Ribbon Panel on Restructuring the PWSA c/o Women for a Healthy Environment 5877 Commerce Street Pittsburgh, PA 15206
Dan Scheid 632 Kirtland Street Pittsburgh PA, 15208	Alicia Salvadeo 35 Bateman Street Pittsburgh PA, 15209
Laura Horowitz 6544 Darlington Road Pittsburgh, PA 15217	Carlyn Van Dyke 5419 Black Street Pittsburgh, PA 15206
Mark Dixon 6437 Landview Road Pittsburgh, PA 15217	Martin Rafanan 547 Roberts Street Pittsburgh, PA 15219
Maureen Copeland 5816 Black Street Pittsburgh, PA 15206	

Respectfully submitted,
PENNSYLVANIA UTILITY LAW PROJECT
Counsel for Pittsburgh UNITED



Elizabeth R. Marx, PA ID 309014
118 Locust Street
Harrisburg, PA 17101

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