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December 19, 2018

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Keystone Bldg., 2<sup>nd</sup> Floor  
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 and M-2018-2640803

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Dear Secretary Chiavetta:

Enclosed for filing please find the Pittsburgh Water and Sewer Authority's ("PWSA")  
Prehearing Memorandum with regard to the above-referenced matter. Copies to be served in  
accordance with the attached Certificate of Service.

Sincerely,



Daniel Clearfield

DC/lww  
Enclosure

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

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the Pittsburgh Water and Sewer Authority's Prehearing Memorandum, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: December 19, 2018

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

Daniel Clearfield, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the Public	:	
Utility Code Regarding Pittsburgh Water and	:	Docket No. M-2018-2640802 (water)
Sewer Authority – Stage 1	:	M-2018-2640803 (wastewater)
	:	
	:	

**PREHEARING MEMORANDUM OF  
THE PITTSBURGH WATER AND SEWER AUTHORITY**

The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) submits this Prehearing Memorandum in response to the Prehearing Conference Order issued on December 7, 2018 by Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Conrad A. Johnson.

**I. PROCEDURAL HISTORY**

Under Chapter 32 of the Public Utility Code,<sup>1</sup> the Commission now has jurisdiction over the provision of water and wastewater<sup>2</sup> service by the PWSA.<sup>3</sup> Section 3204(b) of the Public Utility Code directs PWSA to file a “Compliance Plan” with the Commission that proposes a plan to achieve full regulatory compliance with the Commission’s legal and regulatory requirements.<sup>4</sup>

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<sup>1</sup> 66 Pa.C.S. §§ 3201 to 3209. Chapter 32 was added by Act 65 of 2017.

<sup>2</sup> The term “wastewater” includes (but is not limited to) sewage, infiltration or inflow into sewers, and storm water which is or will become mixed within a combined sewer system. *See* 66 Pa.C.S. § 102. The term does not include storm water collected in a municipal separate storm sewer. *Id.*

<sup>3</sup> *Id.* The Commission has also interpreted Chapter 32 as providing it with jurisdiction over the stand-alone stormwater service provided by PWSA. *See Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water And Sewer Authority*, Docket No. M-2018-2640802 (water) and M-2018-2640803 (wastewater), Final Implementation Order (“FIO”) entered March 15, 2018, at p. 5.

<sup>4</sup> *See* 66 Pa.C.S. § 3204(b), which states, in part, that PWSA “shall file a compliance plan with the commission which shall include provisions to bring an authority’s existing information technology,

The Secretarial Letters issued on September 26, 2018<sup>5</sup> and November 27, 2018,<sup>6</sup> at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater), provide the general framework for the review and investigation of the Compliance Plan. It should be noted that both of those letters indicate that, upon motion, Commission review of the PWSA's Long-Term Infrastructure Improvement Plan ("LTIP") — which was docketed at Docket Nos. P-2018-3005037 (water) and P-2018-3005039 (wastewater)<sup>7</sup> — may be consolidated with Commission review of the Compliance Plan.

PWSA's Compliance Plan was filed on September 28, 2018.<sup>8</sup> Notice of the filing of the Compliance Plan was published in the *Pennsylvania Bulletin* on October 13, 2018.<sup>9</sup> Two stakeholders filed initial written comments to the Compliance Plan: Pittsburgh United ("UNITED") and the Office of Consumer Advocate ("OCA").

On December 14, 2018, PWSA filed a Motion to consolidate the PWSA's Compliance Plan and LTIP. This was done pursuant to the Joint Petition For Settlement ("Settlement" or "Joint Petition") in PWSA's "July 2, 2018 base rate increase filing,"<sup>10</sup> at Docket Nos. R 2018-

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accounting, billing, collection and other operating systems and procedures into compliance with the requirements applicable to jurisdictional water and wastewater utilities under this title and applicable rules, regulations and orders of the commission. The compliance plan shall also include a long-term infrastructure improvement plan in accordance with Subchapter B of Chapter 13 (relating to distribution systems)."

<sup>5</sup> <http://www.puc.state.pa.us/pcdocs/1587126.docx>.

<sup>6</sup> <http://www.puc.state.pa.us/pcdocs/1595705.docx>.

<sup>7</sup> PWSA's LTIP filing was subject to a 30-day comment period. 52 Pa.Code § 121.4(c). Three stakeholders filed written comments to the LTIP: BIE, UNITED and the OCA.

<sup>8</sup> The Commission's FIO established a due date of September 28, 2018, for the filing by PWSA of a Compliance Plan and a LTIP.

<sup>9</sup> 48 Pa.B. 6543, 6635 (October 13, 2018). <https://www.pabulletin.com/secure/data/vol48/48-41/1605.html>.

<sup>10</sup> On July 2, 2018, the PWSA filed Tariff Water – Pa. P.U.C. No. 1 and Tariff Wastewater – Pa. P.U.C. No. 1 to become effective August 31, 2018 with the Commission (collectively, the "July 2, 2018 base rate increase filing"). See PUC Docket No. R-2018-3002645 (Water) and PUC Docket No. R-2018-3002647 (Wastewater) (hereinafter, "Base Rate Filing"). Through these filings, PWSA requested that the Commission approve PWSA's tariffs pursuant to Act 65 of 2017, 66 Pa.C.S. § 3201 et seq.

3002645 (Water) and R-2018-3002647 (Wastewater), wherein the “Joint Petitioners”<sup>11</sup> to agreed that within 30 days of the signature date of that Settlement (i.e., by December 29, 2018<sup>12</sup>), PWSA would file a Motion with the Commission to consolidate PWSA’s Compliance Plan and LTIIIP. As part of that Settlement, PWSA further agreed (a) to file revisions to the Compliance Plan and/or LTIIIP and (b) that certain issues would be investigated as part of this proceeding.<sup>13</sup>

This proceeding was assigned to Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Conrad A. Johnson (collectively the “ALJs”). A Prehearing Conference Notice was issued December 5, 2018 and a Prehearing Conference Order was issued on December 7, 2018, scheduling a prehearing conference for in this proceeding for Thursday, December 20, 2018 at 10 a.m.

## II. SERVICE OF DOCUMENTS

PWSA’s Counsel for this proceedings are: Daniel Clearfield, Esquire; Deanne O’Dell, Esquire; Karen O. Moury, Esquire; and, Carl R. Shultz, Esquire.

PWSA prefers that documents be served electronically in this proceeding, and agrees to receive service of documents electronically in this proceeding. To the extent that materials are available electronically, it is requested that copies be served upon:

Daniel Clearfield	<a href="mailto:dclearfield@eckertseamans.com">dclearfield@eckertseamans.com</a>
Deanne O’Dell	<a href="mailto:dodell@eckertseamans.com">dodell@eckertseamans.com</a>
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Carl R. Shultz	<a href="mailto:cshultz@eckertseamans.com">cshultz@eckertseamans.com</a>

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<sup>11</sup> The “Joint Petitioners” are PWSA, the Bureau of Investigation and Enforcement, (“BIE” or “I&E”), the OCA, the Office of Small Business Advocate (“OSBA”), and UNITED. The following parties indicated that they did not oppose the Settlement: Pennsylvania-American Water Company (“PAWC”) and Duquesne Light Company (“DLC”).

<sup>12</sup> The Settlement of the July 2, 2018 base rate increase filing was signed on November 28, 2019. Thirty days from that date ends on Saturday, December 29, 2018).

<sup>13</sup> See Settlement at ¶ III.H.4 through III.H.13.

To the extent that materials are not available electronically, PWSA requests that only one hard copy of documents, if any, be served only upon Daniel Clearfield at the following address:

Daniel Clearfield, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8th Floor  
Harrisburg, PA 17101

Please note that Mr. Clearfield will be PWSA's lead attorney for the purposes of this proceeding, including the prehearing conference.

### **III. ISSUES AND WITNESSES**

#### **A. Issues**

The November 27<sup>th</sup> Secretarial Letter establishes two stages of review for the PWSA Compliance Plan. For Stage 1, the Commission directed 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 on the remaining issues, including (but not limited to) Chapter 56 billing and collection issues and development of a storm water tariff.

As part of Stage 1, the Commission's Technical Staff submitted an Initial Report<sup>14</sup> consisting of directed questions or issue areas that PWSA and interested parties were directed to address. That report lists more than 77 questions and issues (not including subparts). Those questions or issues may be broadly categorized into the following areas: (a) general compliance;

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<sup>14</sup> <http://www.puc.state.pa.us/pcdocs/1595707.docx>.

(b) infrastructure and operations; (c) financial and accounting; (d) contractual arrangements; and, (e) assistance programs and customer service.

That being said, the OCA has requested<sup>15</sup> that the Commission reconsider the timeline for review of Compliance Plan as outlined in the November 27<sup>th</sup> Secretarial Letter. The OCA has also requested clarification as to the scope of issues to be addressed in the Compliance Plan.

UNITED has also requested<sup>16</sup> clarification and/or reconsideration regarding the resolution of issues not specifically enumerated for consideration in Stage 1 or explicitly reserved for consideration in Stage 2. UNITED asserts that compliance with 66 Pa.C.S. § 1521 et seq. (Discontinuance of Service to Leased Premises), is a “critical health and safety issue” that was overlooked and should be investigated in Stage 1.

PWSA submitted an answer to the OCA and United Motions indicating that it: does not oppose reviewing all issues in a single stage; support expanding the deadline for resolution; and recommends ordering an initial workshop format for all issues. Therefore, if the Commission were to revise its directed procedures the schedule and procedures set forth herein would have to be revised.

## **B. Witnesses**

PWSA anticipates offering the following witnesses to testify in this proceeding on the following subject matters:

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<sup>15</sup> On December 11, 2018, the OCA filed a Petition for Clarification and Reconsideration. <http://www.puc.state.pa.us/pcdocs/1597851.pdf>.

<sup>16</sup> On December 11, 2018, United filed a Petition for Clarification and Reconsideration. <http://www.puc.state.pa.us/pcdocs/1597720.pdf>.

**PWSA**  
**Statement**

**Witness**

**General Subject Matter**

- |   |   |  |
|---|---|--|
| 1 | <b>Robert “Bob” A. Weimar</b><br>PWSA Executive Director                                  | Mr. Weimar will provide an overview of PWSA and PWSA’s filings, and will describe and support PWSA’s answers to the PUC Questions and provide other information on <b>general compliance</b> issues.<br>Mr. Weimar will also describe and support PWSA responses on issues related to <b>Infrastructure and Operations</b> . |
| 2 | <b>Debbie M. Lestitian</b><br>PWSA’s Chief Corporate Counsel and Chief of Administration. | Ms. Lestitian will describe and support PWSA’s answers on issues in the following areas: <b>Contractual Arrangements</b> and regulatory requirements not covered by other PWSA witnesses.  |
| 3 | <b>Jennifer Presutti</b><br>PWSA Budget Director  | Ms. Presutti will describe and support the issues in the following areas: <b>Financial and Accounting</b> and related regulatory requirements.   |
| 4 | <b>Julie Quigley</b><br>PWSA’s Director of Administration                                 | Ms. Quigley will describe and support the issues in the following areas: <b>Assistance Programs and Customer Service</b> (to the extent those issues are addressed in Stage 1).  |

PWSA reserves the right to substitute witnesses or submit additional witnesses.

**C. Admissions or Stipulations**

As part of the Settlement in PWSA’s July 2, 2018 Base Rate Filing:

- PWSA agrees that it has the burden of proof in the Compliance Plan proceeding to show that every element of its Compliance Plan, and the policies and procedures described, referenced, or referred to therein, is just and reasonable, is consistent with all applicable laws, regulations, and policies, and is in the public interest.<sup>17</sup>

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<sup>17</sup> Settlement at ¶ III.H.2.

- PWSA will not object in the Compliance Plan and/or LTIP proceeding to the admission of any testimony, documents, or answers to interrogatories exchanged throughout the course of July 2, 2018 base rate increase proceeding.<sup>18</sup>

There have been no other admissions or stipulations finalized at this time.

#### IV. PROPOSED SCHEDULE AND DISCOVERY

##### A. **Proposed Schedule**

##### 1. Procedural Schedule

PWSA has had informal discussions with the other parties concerning the procedural schedule. At this time, those discussion did not result in a consensus schedule. PWSA respectfully requests that the ALJs consider this proposed schedule:

Description	Date		Days Between Tasks
Informal Discovery and Discussion on Issues	January 2019		--
PWSA's Written Direct Testimony & Updated Compliance Plan	February 18, 2019	Monday	--
Other Parties' Written Direct Testimony	April 2, 2019	Monday	42
Written Rebuttal Testimony – PWSA and Other Parties	May 1, 2019	Wednesday	30
Written Surrebuttal Testimony – PWSA and Other Parties	May 14, 2019	Tuesday	13
Evidentiary Hearing for oral rejoinder (if any) from PWSA witnesses and cross-examination (if any) of all witnesses	May 21, 2019 May 22, 2019, if needed May 23, 2019, if needed May 24, 2019, if needed	Tuesday Wednesday Thursday Friday	7
Main Briefs – All Parties	June 17, 2019	Monday	24
Reply Briefs – All Parties	June 27, 2019	Thursday	10
Recommended Decision	July 29, 2019	Monday	32
Exceptions	August 19, 2019	Monday	21
Reply Exceptions	August 29, 2019	Thursday	10

<sup>18</sup> Settlement at ¶ III.H.3.

For the schedule: All dates are in-hand delivery. Electronic mail for receipt and distribution will satisfy in-hand service dates.

2. Public Input Schedule

PWSA is not proposing a schedule for public input hearings but does not object if the public parties wish to request that they be scheduled. PWSA would note that the public has had the opportunity to submit written comments on both Compliance Plan and LTIIP and had the opportunity to participate in public input hearings in the July 2, 2018 base rate increase filing. As indicated above, PWSA has agreed not object to the admission of testimony from the July 2, 2018 base rate increase proceeding.

**B. Discovery**

PWSA encourages the use of informal discovery to expedite the discovery process and has specifically included an informal discovery opportunity in January (and is willing to schedule additional sessions after the filing of the updated Compliance Plan and testimony).

PWSA has established a cloud-based, secure site for the assistance of the parties in handling discovery. Discovery responses including attachments are available at ESCM Share File site. For a party to receive access, please contact Deanne O'Dell ([dodell@eckertseamans.com](mailto:dodell@eckertseamans.com)) or 717-255-3744 and provide the name and email address of the person seeking access.

PWSA proposes the following modifications to the discovery timelines set forth in PUC regulations:

1. Answers to interrogatories shall be served in-hand within fifteen (15) calendar days of service of the interrogatories. After service of rebuttal testimony, the

parties shall use their best efforts to provide answers to written interrogatories, served in hand within ten (10) calendar days of service.

2. Objections to interrogatories to be communicated orally within three (3) days of service; unresolved objections shall be served to the ALJ in writing within five (5) days of service of interrogatories.
3. Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of written objections.
4. Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of such motions.
5. Rulings on such motions shall be issued, if possible, within seven (7) calendar days of the filing of the motion.
6. Requests for admission are deemed admitted unless answered within ten (10) calendar days or objected to within five (5) calendar days of service.
7. Answers to on-the-record data requests shall be served in-hand within seven (7) calendar days of the requests.
8. Any discovery served after 12:00 p.m. on a Friday or the day before a holiday will be deemed to have been served on the next business day for purposes of tracking due dates.
9. All discovery due dates shall be "in-hand" and electronic or fax service on the due date will satisfy the "in-hand" requirement.
10. Interrogatories, requests for production and requests for admission that are objected to but which are not made the subject of a motion to compel will be deemed withdrawn.

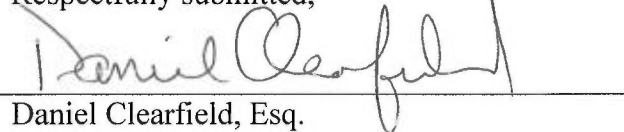
### **C. Protective Order**

A Protective Order was issued by the ALJs in the Base Rate Filing. PWSA suggests that the same protective order be issued in this proceeding. If directed by the ALJs to do so, PWSA will submit a Motion for Protective Order for consideration.

V. SETTLEMENT

PWSA is willing to discuss the settlement of issues, and will be initiating such discussions as soon as the parties indicate that they have had sufficient time to review PWSA's direct case.

Respectfully submitted,



Daniel Clearfield, Esq.  
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Deanne M. O'Dell, Esq.  
(PA Atty I.D. 80614)

Karen O. Moury, Esq.  
(PA Attorney ID No. 36879)

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Dated: December 19, 2018

Counsel for  
The Pittsburgh Water and Sewer Authority