



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

March 4, 2019

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

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

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Notice to Plead and Motion to Challenge Pittsburgh Water and Sewer Authority's Designation of Certain Information as Proprietary and Confidential** in the above-captioned proceeding.

Copies are being served on all active parties of record as evidenced in the attached Certificate of Service. If you have any questions, please contact me at (717) 787-8754.

Sincerely,

---

Gina L. Miller  
Prosecutor  
Bureau of Investigation & Enforcement  
PA Attorney I.D. No. 313863

John M. Coogan  
Prosecutor  
Bureau of Investigation & Enforcement  
PA Attorney I.D. No. 313920

GLM/jfm  
Enclosure

cc: Hon. Mark A. Hoyer (ALJ, PUC Pittsburgh)  
Hon. Conrad A. Johnson (ALJ, PUC Pittsburgh)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the	:	Docket Nos.
Public Utility Code Re Pittsburgh	:	M-2018-2640802 (Water)
Water and Sewer Authority – Stage 1	:	M-2018-2640803 (Wastewater)

**NOTICE TO PLEAD**

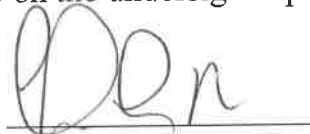
*To: Daniel Clearfield, Esq., Deanne O'Dell, Esq., Karen O. Moury, Esquire,  
Carl R. Shultz, Esq., and Sarah D. Stoner, Esq.,  
Counsel for Pittsburgh Water and Sewer Authority Pittsburgh Water and Sewer  
Authority*

You are hereby notified to file a written response to the attached Expedited Motion of the Bureau of Investigation and Enforcement to Challenge Pittsburgh Water And Sewer Authority's Designation of Certain Information As Proprietary and Confidential in the form and manner as directed by the presiding officers. If you do not file a written response to I&E's Motion, the presiding officers may rule in favor of I&E on the attached Motion without a hearing.

All pleadings, such as answers to motions, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

You must also serve a copy of your response on the undersigned prosecutors.



Gina L. Miller, Prosecutor  
PA Attorney ID No. 313863

John M. Coogan, Prosecutor  
PA Attorney ID No. 313920

Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor West  
Harrisburg, PA 17120

March 4, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the	:	Docket Nos.
Public Utility Code Re Pittsburgh	:	M-2018-2640802 (Water)
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**EXPEDITED MOTION OF THE BUREAU OF INVESTIGATION AND  
ENFORCEMENT TO CHALLENGE PITTSBURGH WATER AND  
SEWER AUTHORITY’S DESIGNATION OF CERTAIN INFORMATION  
AS PROPRIETARY AND CONFIDENTIAL**

Pursuant to 52 Pa. Code § 5.365(a), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) moves that Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Conrad A. Johnson issue an order directing the Pittsburgh Water and Sewer Authority (“PWSA”) to remove the proprietary and confidential designation of the following materials it served upon parties on February 14, 2019: (1) Page 10 of PWSA Statement No. 2-C (the direct testimony of Debbie M. Lestitian); (2) Confidential Exhibit DML/C-1; and (3) Confidential Exhibit DML/C-2.

Additionally, I&E respectfully requests expedited consideration of its Motion. An expedited resolution to this Motion is essential because I&E’s direct testimony in this case is due to be served by April 5, 2019, and the determination of whether the materials at issue may be publicly disclosed will impact the content and structure of I&E’s direct testimony, as well as I&E’s litigation strategy for this case. In support of this Motion, I&E avers the following:

## I. Introduction

1. In accordance with Act 65, the Pennsylvania Public Utility Code (“Code”) was amended to grant the Commission jurisdiction over the provision of utility water, wastewater, and stormwater service by entities created by Pennsylvania cities of the second class under the Municipality Authorities Act.<sup>1</sup> These amendments established regulatory deadlines, requirements, and obligations for subject entities, including PWSA, and those amendments are now codified in Chapter 32 of the Code. Consistent with Chapter 32, the Commission’s jurisdiction over PWSA became effective on April 1, 2018<sup>2</sup> and PWSA was required to file a Compliance Plan with the Commission that includes provisions designed to bring the following areas into compliance with the Code, the Commission’s regulations and orders, and other applicable rules: “existing information technology, accounting, billing, collection and other operating systems and procedures.”<sup>3</sup>

2. On September 26, 2018, the Commission issued a Secretarial Letter<sup>4</sup> that explained the process that it prescribed for PWSA’s Compliance Plan proceeding. Specifically, the Procedural Secretarial Letter indicated that after PWSA filed its Compliance Plan on September 28, 2018, the Commission would publish notice of the filing in the Pennsylvania Bulletin on October 13, 2018, interested parties could file comments within 20 days of the publication, and within 45 days, the Commission would

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<sup>1</sup> At present, Pittsburgh is Pennsylvania’s sole city of the second class.

<sup>2</sup> 66 Pa. C.S. § 3202(a)(1).

<sup>3</sup> 66 Pa. C.S. § 3204(b).

<sup>4</sup> “*Procedure for Commission Review of the September 28, 2018 Compliance Plan*” (the “Procedural Secretarial Letter”).

issue a secretarial letter assigning the filings to the OALJ for resolution of any factual matters that interested parties may seek to develop.

3. In conjunction with the timeline set by the Commission, PWSA filed its Compliance Plan on September 28, 2018, the Commission publicized notice of the filing in the Pennsylvania Bulletin,<sup>5</sup> and both the Office of the Consumer Advocate (“OCA”) and Pittsburgh UNITED (“UNITED”) filed timely comments.

4. On October 18, 2018, the OCA filed an Answer, Notice of Intervention, and Public Statement in this case. On October 22, 2018, I&E entered its appearance,<sup>6</sup> and on November 14, 2018, the Office of the Small Business Advocate entered its appearance. Petitions to Intervene were filed by Pennsylvania American Water Company and UNITED on October 30, 2018 and November 1, 2018, respectively.

5. On November 28, 2018, the Commission issued a Secretarial Letter (“Staff Directive”) which referred PWSA’s Compliance Plan to the OALJ for a two-stage evidentiary proceeding. The Staff Directive was accompanied by a document titled “Technical Staff Initial Report and Directed Questions Stage 1” (“Directed Questions”) which set forth directed questions to be addressed by parties to Stage 1 of PWSA’s Compliance Plan.

6. The Commission’s Directed Questions specifically address PWSA’s relationship with the City of Pittsburgh (“City”) as it pertains to the Cooperation Agreement between those two entities. More specifically, the Directed Questions

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<sup>5</sup> 48 Pa.B. 6635.

<sup>6</sup> I&E notes that it also filed a corrected Notice of Appearance on November 28, 2018.

expressly indicated that “parties should discuss” a listing of specifically identified topics regarding the Cooperation Agreement, which include the following:

- A. Those services and related costs that PWSA can identify and quantify and the basis for those costs, e.g., market, cost plus, or other method.
- B. Whether PWSA can identify all categories of costs associated with the Cooperation Agreement.
- C. Whether PWSA receives any services from the City of Pittsburgh at no cost.<sup>7</sup>

7. Subsequent to the Commission’s issuance of the Directed Questions, the Office of Administrative Law Judge assigned Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Conrad A. Johnson (“ALJ Hoyer” and “ALJ Johnson,” or collectively, “the ALJs”) to preside over this matter.

8. On December 7, 2018, the ALJs issued a Prehearing Conference Order scheduling a telephonic Prehearing Conference in this case for December 20, 2018 at 10:00 a.m.

9. During the Prehearing Conference, the ALJs adopted a litigation schedule for the parties which provided, inter alia, for PWSA to serve its direct testimony in this case on February 14, 2019. The litigation schedule was memorialized in the Prehearing Order issued by the ALJs on December 27, 2018.<sup>8</sup>

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<sup>7</sup> The Commission’s Directed Questions, p. 14.

<sup>8</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Stage 1*, M-2018-2640802 et al., Prehearing Order, p. 7 (entered December 27, 2018).

10. On January 22, 2019, PWSA filed a Motion for Protective Order in this proceeding. In its Motion, PWSA indicated the following:

Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in Paragraph 15 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission or a Court with jurisdiction over such matters.<sup>9</sup>

11. PWSA's Motion for Protective Order also expressly recognized that parties to this proceeding would retain the right to challenge the confidential or proprietary nature of information, and it clarified that the party providing the information would retain the burden of demonstrating that the designation is appropriate.<sup>10</sup>

12. Although PWSA's Motion for Protective Order remains pending, counsel for I&E did not object to the entry of the proposed Protective Order. Additionally, I&E's counsel provided certifications to PWSA from all impacted I&E witnesses, staff, and counsel indicating that each of those I&E employees agreed to abide by the terms of PWSA's pending Protective Order.<sup>11</sup>

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<sup>9</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Stage 1*, M-2018-2640802 et al., PWSA Motion for Protective Order, Attachment A, ¶16.

<sup>10</sup> *Id.* at ¶17.

<sup>11</sup> On January 28, 2019, I&E provided electronic certifications for all but one of its impacted employees who was out of town. On February 8, 2019, I&E's counsel hand-delivered a physical copy of all employees certifications to PWSA's counsel.

13. In accordance with the litigation schedule, PWSA served its direct testimony upon parties and the ALJs on February 14, 2019.

14. PWSA's direct testimony included PWSA Statement No. C-2, the direct testimony of Debbie M. Lestitian. Statement No. C-2 is comprised of 25 pages of substantive testimony, with page 10 largely consisting of information claimed to be "proprietary." Additionally, Statement No. C-2 also incorporates Confidential Exhibits DML/C-1 through DML/C-3.<sup>12</sup>

15. The "proprietary" information contained on page 10 consists of the estimates of the costs of the services that PWSA provides to the City, as well as estimates of the costs of the services that the City provides to PWSA. Confidential Exhibits DML/C-1 and DML/C-2 are draft documents which contain cost categories and cost estimates and which are being used by PWSA and the City as they negotiate a Cooperation Agreement. Thus, it appears that both PWSA and the City already have access to this information and that they are using this information to determine which costs PWSA ratepayers will be expected to pay.

16. The claimed proprietary information contained on page 10 of PWSA Statement No. C-2, as well as Confidential Exhibits DML/C-1 and DMC/C-2, (collectively the "PWSA/City cost information") is directly responsive to the Commission's Directed Questions regarding identification of the categories and

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<sup>12</sup> PWSA has marked Confidential Exhibits DML/C-1 through DMC/C-3 confidential in their entirety; as a result, I&E is unable to reference even the titles of these documents in this pleading. However, I&E notes that PWSA has served all confidential materials upon the ALJs.



quantification of service costs between PWSA and the City, as outlined in paragraph 6 above.

17. The PWSA/City cost information is a matter of compelling public interest since PWSA is now a jurisdictional public utility and its ratepayers must absorb any unpaid costs of services that PWSA provides to the City. Additionally, to the extent that the City provides services to PWSA, it is in the public interest to disclose the costs and basis for such services in order to ensure that they are reasonable and prudently incurred.

18. On February 22, 2019, counsel for I&E contacted a member of PWSA's counsel by telephone, to indicate that I&E disputes PWSA's designation of the PWSA/City cost information as proprietary and confidential.

19. On February 22, 2019, after contacting a member of PWSA's counsel regarding the disputed proprietary and confidential designation for the PWSA/City cost information, the undersigned counsel memorialized the content of the call in electronic mail directed to all of PWSA's counsel. In its message, I&E's undersigned counsel requested that PWSA consider I&E's request to eliminate the proprietary and confidential designation for the PWSA/City cost information so that the information could be publicly available to PWSA's ratepayers. Additionally, I&E's undersigned counsel requested that PWSA respond to its request by the close of business on February 28, 2019, so that if a timely resolution could not be reached, I&E could move forward with a formal challenge to the proprietary and confidential designation for the PWSA/City cost information. Finally, I&E's undersigned counsel indicated that I&E would remain available to discuss this matter further with PWSA's counsel should PWSA desire the opportunity.

20. On February 28, 2019, counsel for PWSA contacted I&E's counsel and indicated that the basis for PWSA's proprietary and confidential designation of the PWSA/City cost information was that the information at issue was a subject of active contract negotiations between PWSA and the City. PWSA's counsel asserted that due to the ongoing negotiations, PWSA has a clear business interest in protecting the information at issue, making it inappropriate to release. Despite PWSA's assertion and I&E's rejection of that assertion, the parties agreed to continue their discussions in order to determine if some type of resolution could be reached.

21. To date, no resolution has been reached. Nonetheless, although I&E's counsel has now acted to ensure that its ability to obtain the requested relief is not compromised, counsel for both I&E and PWSA have agreed to continue exploring resolutions to this dispute while this Motion is pending.

22. I&E requests that the instant Motion be considered on an expedited basis so as to provide I&E with certainty about the status of the PWSA/City cost information that PWSA seeks to restrict. An expedited resolution to this Motion is essential because I&E's direct testimony in this case is due to be served by April 5, 2019, and the determination of whether the PWSA/City cost information may be publicly disclosed will impact the content and structure of I&E's direct testimony, as well as I&E's litigation strategy for this case.

## **II. Discussion**

### **A. PWSA Has No Viable Basis for the Restricting Public Access to the PWSA/City Cost Information**

23. As indicated in Paragraph 20 above, PWSA's basis for designating the PWSA/City cost information proprietary and confidential is that the information is a subject of current contract negotiations between PWSA and the City and therefore that PWSA has a business interest in protecting that interest. However, as explained below, PWSA's basis is insufficient to meet the standard necessary to warrant proprietary and confidential treatment under the Commission's regulation.

24. The Commission's regulation regarding orders to limit availability of proprietary information provides as follows:

A petition for protective order to limit the disclosure of a trade secret or other confidential information on the public record will be granted only when a party demonstrates that the potential harm to the party of providing the information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process. A protective order to protect trade secrets or other confidential information will apply the least restrictive means of limitation which will provide the necessary protections from disclosure. In considering whether a protective order to limit the availability of proprietary information should be issued, the Commission or the presiding officer should consider, along with other relevant factors, the following: (1) The extent to which the disclosure would cause unfair economic or competitive damage; (2) The extent to which the information is known by others and used in similar activities; (3) The worth or value of the information to the party and to the party's competitors; (4) The degree of difficulty and cost of developing the information; (5) Other

statutes or regulations dealing specifically with disclosure of the information.<sup>13</sup>

25. PWSA must prove its designation is appropriate, and, as explained below, PWSA has failed to assert facts that support limiting the disclosure of the PWSA/City cost information under any of the five factors outlined in 52 Pa. Code § 5.365(a).

- (i.) In this case, the disclosure of the PWSA/City cost information at issue would not appear to cause an unfair or competitive disadvantage to PWSA or to the City<sup>14</sup> because, from the information available, it appears that these parties are the only entities engaged in negotiations regarding the costs, and both of these parties have already disclosed this information to each other.<sup>15</sup> On the other hand, restricting access to this information will be unfair to ratepayers who must bear the costs at issue while being powerless to oversee or participate in the establishment of a financial relationship between PWSA and the City. I&E asserts ratepayers must be aware of how PWSA is proposing to spend ratepayer money.
- (ii.) As established in the paragraph above, the extent to which the PWSA/City cost information at issue is known or used by others is not a factor that weighs in favor of proprietary or confidential treatment of the information. To the contrary, the need for PWSA to establish a just and reasonable financial relationship with the City was a prominent issue in PWSA's recent rate case proceeding, and still is a prominent issue in the pending Compliance Plan proceeding.

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<sup>13</sup> 52 Pa. Code § 5.365(a).

<sup>14</sup> I&E makes the arguments regarding the City for purposes of completeness; however, I&E notes that the City has elected not to participate in this proceeding, although it could have chosen to intervene to represent any interest it may have in this and other issues involving PWSA's operations and compliance with the Code, Commission regulations, and Commission orders, PWSA stated the estimates of costs reflected at Confidential Exhibits DML/C-1 and CML/C-2 "are being used by PWSA and the City in negotiations". PWSA Statement No. 2-C, p. 10.

- (iii.) PWSA has provided no indication that it, the City, or any competitor of PWSA or the City would assign worth or value the PWSA/City cost information that would warrant restriction of the PWSA/City cost information. Instead, I&E submits that the real value or worth of the information at issue exists only when it is used to ensure PWSA's ratepayers receive the benefit of services that they are charged for and do not pay for factor that supports restriction of the PWSA/City cost information.
- (iv.) PWSA has failed to establish that the difficulty and cost of developing the PWSA/City cost information is a viable basis for restricting public access to that information. On the contrary, I&E submits that as a regulated public utility, PWSA has an obligation to continually and fully inform ratepayers of the underlying basis of the costs they are expected to bear and the services they can expect to receive in return.
- (v.) Finally, in its quest to restrict public access to the PWSA/City cost information, PWSA has not referenced statutes or regulations dealing specifically with disclosure of that information. As well, I&E is unaware of any specific statutes or regulations that would prohibit disclosure of this information being freely exchanged between two public entities. Accordingly, the existence of such authority is not a factor that weighs in favor

26. In summary, and as set forth above, PWSA has not met the standard necessary to support limiting the disclosure of the PWSA/City cost information under any of the five factors outlined in 52 Pa. Code § 5.365(a). Accordingly, it has failed to provide any viable basis for designating the PWSA/City cost information proprietary and confidential. Despite PWSA's vague assertion that it has a business interest in protecting this information; the converse if true. As a regulated public utility, PWSA has a business interest in disclosing this information to its ratepayers. I&E asserts that both parties are more likely to charge service-based costs with the benefit of public scrutiny. By allowing the confidential designation, the Commission risks facilitating an inequitable relationship

to be consummated in a new Cooperation Agreement. Therefore, PWSA should be immediately compelled to remove such designations and make the PWSA/City cost information publicly available in this proceeding.

**B. Restricting Public Access to the PWSA/City Cost Information is Inconsistent with the Goal of this Compliance Plan Proceeding and with the Protection of the Public Interest**

27. In a Pennsylvania House of Representatives Co-Sponsorship Memoranda dated May 24, 2017, the sponsors of House Bill 1490, legislation intended to place the PWSA under the regulatory oversight of the Commission, Representatives Mike Turzai and Harry Readshaw addressed the purpose of such legislation. In their Memoranda, Representatives Turzai and Readshaw addressed the rationale for the legislation, in pertinent part, as follows:

While the PUC does not currently have jurisdiction over the operations of municipal authorities, **in the case of PWSA, regulatory oversight is needed to fix this deteriorating system and restore the confidence of PWSA's customers.** Placing PWSA under the regulatory authority of the PUC will require its board of directors to bring the system into compliance with the requirements of Title 66 of the PA Statutes and PUC regulations applicable to investor-owned water and wastewater utilities.<sup>16</sup>

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<sup>16</sup> House Co-Sponsorship Memoranda for HB 1490, PA House of Representatives Session of 2017-2018 Regular Session, May 24, 2017 (portions omitted, emphasis added).

28. As part of the legislation that placed PWSA under the Commission's jurisdiction, the Pennsylvania General Assembly specifically required PWSA to file a Compliance Plan with the Commission that includes provisions designed to bring the following areas into compliance with the Code, the Commission's regulations and orders, and other applicable rules: "existing information technology, accounting, billing, collection and other operating systems and procedures."<sup>17</sup>

29. By way of its Staff Directive of November 28, 2018, the Commission mandated that Stage 1 of PWSA's Compliance Plan, the instant proceeding, be directed toward urgent infrastructure remediation and improvement, and the revenue and financing requirements of maintaining service that supports public health and safety.<sup>18</sup> As part of the Staff Directive, the Commission issued Directed Questions that specifically instructed parties to discuss services and related costs that PWSA can identify and quantify and the basis for those costs, PWSA's ability to quantify costs associated with a City Cooperation Agreement, and whether PWSA receives any services from the City of Pittsburgh at no cost.<sup>19</sup>

30. The PWSA/City cost information that PWSA seeks to shield from public view has a direct bearing on PWSA's revenues, including revenues available for urgent infrastructure remediation and improvement, and its financing requirements of maintaining service. More specifically, PWSA's first jurisdictional rate case,<sup>20</sup> I&E's review of PWSA's filing revealed that PWSA's payments to the City lacked cost

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<sup>17</sup> 66 Pa. C.S. § 3204(b).

<sup>18</sup> Staff Directive, p. 3 (emphasis added).

<sup>19</sup> The Commission's Directed Questions, p. 14.

<sup>20</sup> *Pa PUC v. Pittsburgh Water and Sewer Authority*, Docket No. R-2018-3002645 et al.

justification, as due to a lack of documentation, it was unclear which type of services the City provided to PWSA, when the services were provided, and how much it actually cost to provide those services.<sup>21</sup> I&E also expressed concern about lost revenue resulting from PWSA's provision of free water service to the City.<sup>22</sup>

31. Although PWSA first rate case resulted in a Settlement,<sup>23</sup> I&E notified PWSA of its position that PWSA's payments to the City for anything other than services provided, provision of free service to the City, and subsidy payments for customers outside of PWSA's service territory conflict with PWSA's obligations under the Code because they negatively impact PWSA's ability to provide safe and effective service and to charge just and reasonable rates.<sup>24</sup> As I&E explained, the costs of services that PWSA provides to the City, as well as lost revenue, and the value of any services or costs that the City incurs for PWSA, directly impact PWSA's financing requirements necessary for maintaining service that supports public health and safety.

32. The public interest is not served by PWSA's attempt to shield cost information from captive ratepayers, even if the cost information at issue is estimated. To the contrary, I&E avers it is critical that this information be available to the public because PWSA should not commit ratepayer funds to questionable expenses without public disclosure. This is consistent with Commission regulations, which acknowledge

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<sup>21</sup> *Pa PUC v. Pittsburgh Water and Sewer Authority*, Docket No. R-2018-3002645 et al., I&E St. No. 2; I&E Statement in Support of Settlement, p. 43.

<sup>22</sup> *Pa PUC v. Pittsburgh Water and Sewer Authority*, Docket No. R-2018-3002645 et al., I&E Statement in Support of Settlement, pp. 43-44.

<sup>23</sup> The Commission voted to approve the Settlement at its Public Meeting on February 7, 2019, and a Final Order was entered on February 27, 2019.

<sup>24</sup> *Pa PUC v. Pittsburgh Water and Sewer Authority*, Docket No. R-2018-3002645 et al, I&E Statement in Support of Settlement, pp. 43-51.



the public's interest in free and open access to the administrative hearing process and the need to apply the least restrictive means of limitation.<sup>25</sup> As a jurisdictional public utility, PWSA is now obligated under the Code to provide its ratepayers with adequate, efficient, safe and reasonable service and facilities.<sup>26</sup> PWSA must also charge just and reasonable rates that conform with regulations or orders of the Commission.<sup>27</sup> PWSA's obligation to comply with these parts of the Code not only is squarely within the purview of this compliance proceeding, but its ability to comply will be directly impacted by any agreement that PWSA makes to pay the City for services not received or in an amount in excess of fair value for services received. To that end, ensuring that ratepayers are informed about the process for establishing and the basis of costs that they must ultimately bear is necessary to protect the public interest.

33. Eliminating PWSA's self-imposed determination of the proprietary and confidential designation for the PWSA/City cost information will enable the information to be available to PWSA's ratepayers whose service and rates are directly impacted by the costs at issue. The public interest is thwarted, not protected, by shielding PWSA from the accountability owed to PWSA ratepayers; however, the Commission now has the jurisdiction necessary to ensure that accountability. Accordingly, PWSA should be immediately compelled to remove the proprietary and confidential designation from Page 10 of PWSA Statement No. 2-C (the direct testimony of Debbie M. Lestitian) and Confidential Exhibit DML/C-1; and (3) Confidential Exhibit DML/C-2.

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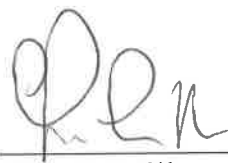
<sup>25</sup> 52 Pa. Code § 5.365(a).

<sup>26</sup> 66 Pa. C.S. § 1501.

<sup>27</sup> 66 Pa. C.S. § 1301.

WHEREFORE, for the reasons set forth above, I&E respectfully requests that Deputy Chief Administrative Law Judge Hoyer and Administrative Law Judge Johnson issue an order directing the Pittsburgh Water and Sewer Authority to remove the proprietary and confidential designation of the following materials it served on February 14, 2019: (1) Page 10 of PWSA Statement No. 2-C (the direct testimony of Debbie M. Lestitian); (2) Confidential Exhibit DML/C-1; and (3) Confidential Exhibit DML/C-2.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Gina L. Miller', is written over a horizontal line.

Gina L. Miller  
Prosecutor  
PA Attorney ID No. 313863

John M. Coogan  
Prosecutor  
PA Attorney ID No. 313920

Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor North  
Harrisburg, PA 17120

March 4, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Water and Sewer Authority – Stage 1	:	M-2018-2640803 (Wastewater)

**VERIFICATION**

I, Gina L. Miller, Prosecutor of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, hereby state that the facts set forth above 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.

Date: March 4, 2019



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Gina L. Miller  
Prosecutor  
PA Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

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**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Notice to Plead and Motion to Challenge Pittsburgh Water and Sewer Authority's Designation of Certain Information as Proprietary and Confidential** on March 4, 2019, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

**Served via First Class and Electronic Mail**

The Honorable Mark A. Hoyer  
The Honorable Conrad A. Johnson  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
Piatt Place, Suite 220  
301 Fifth Avenue  
Pittsburgh, PA 15206

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Karen O. Moury, Esq.  
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