



COMMONWEALTH OF PENNSYLVANIA

April 20, 2020

E-FILED

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 Regarding Pittsburgh Water And Sewer Authority – Stage 1 and Petition of The Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan / Docket Nos. M-2018-2640802, M-2018-2640803 and P-2018-3005037, P-2018-3005039

Dear Secretary Chiavetta:

Enclosed please find the Answer and Verification, on behalf of the Office of Small Business Advocate (“OSBA”), to the Petition for Reconsideration and/or for Supersedeas of the City of Pittsburgh, in the above-captioned proceedings.

Copies will be served on all known parties in these proceedings, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Erin K. Fure

Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245

Enclosures

cc: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Petition of The Pittsburgh Water and Sewer	:	Docket No.	P-2018-3005037 (water)
Authority for Approval of Its Long-Term	:		P-2018-3005039 (wastewater)
Infrastructure Improvement Plan	:		

**ANSWER OF SMALL BUSINESS ADVOCATE TO THE PETITION FOR
RECONSIDERATION AND/OR FOR SUPERSEDEAS OF THE CITY OF
PITTSBURGH**

Pursuant to 52 Pa. Code §5.61 and 52 Pa. Code § 5.572(e), the Office of Small Business Advocate (“OSBA”) hereby answers the *Petition for Reconsideration and/or for Supersedeas of the City of Pittsburgh* (“*Petition for Reconsideration*”) filed with the Pennsylvania Public Utility Commission (“Commission”) on April 10, 2020, and avers the following in support thereof:

I. INTRODUCTION

As a preliminary matter, the OSBA respectfully points out that the City of Pittsburgh (“City”) is not a party to the above-captioned case and has not participated in any of the numerous stages of litigation in this matter. The City did not conduct discovery, submit testimony, participate in any of the prehearing conferences or in the evidentiary hearing, submit briefs, or file exceptions. Only after the March 26, 2020 Order (“*Final Order*”) was entered in this case by the Commission did the City file a *Petition to Intervene* on April 9, 2020, which is currently pending Commission review. The OSBA intends to oppose the City’s *Petition to Intervene*.

The City argues that it filed its *Petition for Reconsideration* pursuant to 52 Pa. Code § 5.572, which is a regulation governing the manner, timing, and formatting of filing a petition for

reconsideration. Section 703 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 703, is the statute that governs petitions for reconsideration, which states, “After an order has been made by the commission, any **party** to the proceedings may, within 15 days after the service of the order, apply for a rehearing in respect of any matters determined in such proceedings and specified in the application for rehearing”¹ (emphasis added). The City is not a party, and therefore does not have standing to bring its *Petition for Reconsideration*. Therefore, the *Petition for Reconsideration* should be dismissed.

II. BACKGROUND

1. Admitted.
2. Admitted.
3. Admitted in part, denied in part. It is admitted that the City owns the water and sewer system. It is denied that the City did not have notice of the Compliance Plan proceedings.
4. Admitted.
5. Admitted.
6. Denied. The OSBA is without knowledge or information sufficient to form a believe as to the truth of the averments in Paragraph 6.
7. Denied. The OSBA is without knowledge or information sufficient to form a believe as to the truth of the averments in Paragraph 7.
8. Admitted in part. It is admitted that the Pennsylvania Water and Sewer Authority (“PWSA”) and the City are separate. The remaining averments in Paragraph 8 are denied, as the OSBA is without sufficient knowledge or information to form a belief as to the truth of the averments.

¹ 66 Pa. C.S. § 703(f).

9. Denied. The OSBA is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 9.

10. Admitted in part, denied in part. By way of further answer, it is admitted that PWSA and the City entered into a Capital Lease Agreement in 1995. The remaining averments in Paragraph 10 are denied, as the OSBA is without sufficient knowledge or information to form a belief as to the truth of the averments.

11. Denied. The OSBA is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 11.

12. Admitted in part, denied in part. To the extent that the averments in Paragraph 12 are consistent the 1995 Cooperation Agreement, they are admitted. By way of further answer, the 1995 Cooperation Agreement is a written document and speaks for itself. The remaining averments in Paragraph 12 are denied.

13. Admitted in part, denied in part. It is admitted that the City and PWSA negotiated the 2019 Cooperation Agreement to be effective on October 3, 2019. It is denied that the 2019 Cooperation Agreement became effective on October 3, 2019 because the contract has not been approved by the Commission as of the date of this filing. By way of further answer, PWSA is under the jurisdiction of the Commission and, as noted in the *Final Order*, “PWSA cannot circumvent the Code and Commission mandates by making separate arrangements through a Cooperation Agreement with the City.”²

14. Denied. The Commission has not approved the 2019 Cooperation Agreement pursuant to 66 Pa. C.S. § 508.

15. Denied. The OSBA is without knowledge or information sufficient to form a belief as

² March 26, 2020 Opinion (“*Opinion*”), at p. 59.

to the truth of the averments in Paragraph 15 regarding the City's beliefs. The remaining averments in Paragraph 15 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 15 are denied. By way of further answer, the issues decided by the Commission in the *Final Order* are properly resolved in the Compliance Plan proceeding. "PWSA cannot circumvent the Code and Commission mandates by making separate arrangements through a Cooperation Agreement with the City."³ Any issues not already decided by the Commission that have bearing on the 2019 Cooperation Agreement will be addressed in the pending proceeding at Docket No. U-2020-3017970.

16. The averments in Paragraph 16 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 16 are denied, and strict proof thereof is demanded.

17. The averments in Paragraph 17 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 17 are denied, and strict proof thereof is demanded.

18. The averments in Paragraph 18 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 18 are denied, and strict proof thereof is demanded.

19. Denied. The OSBA is without knowledge or information sufficient to form a belief as to the truth of the averments Paragraph 19 regarding PWSA and the City's motivations. The remaining averments in Paragraph 19 constitute set forth a legal argument to which no response is required. To the extent a response is required, the remaining averments in Paragraph 19 are denied, and strict proof thereof is demanded.

³ *Opinion*, at p. 59.

20. Admitted. By way of further answer, Act 65 speaks for itself.

21. Admitted in part, denied in part. It is admitted that the Commission took steps in response to Act 65. It is denied that the Commission's responsibilities are perceived. By way of further answer:

On December 21, 2017, Governor Wolf signed Act 65 of 2017 into law whereby the Pennsylvania Public Utility Code (Code) was amended to add new language to 66 Pa. C.S. § 1301 and to add a new Chapter 32 consisting of Sections 3201 through 3209, 66 Pa. C.S. § 3201, *et seq.* (Act 65 or Chapter 32). Chapter 32 addresses Commission jurisdiction over the utility service of water, wastewater, and storm water provided by Pennsylvania cities of the second class under the MAA. Pittsburgh is the only Pennsylvania city of the second class. Pursuant to 66 Pa. C.S. § 3202(a)(1), the provisions of the Code (except Chapters 11 and 21) apply to the PWSA in the same manner as a public utility effective April 1, 2018.⁴

It is denied that the Commission issued its *Final Implementation Order* ("FIO") on January 18, 2018; to the contrary, the Commission issues its *Tentative Implementation Order* ("TIO") on January 18, 2018 and its FIO on March 15, 2018.

22. Denied. The Commission's FIO issued March 15, 2018 is a written document and speaks for itself. By way of further answer, the Commission ordered:

That the compliance plans, which will detail how to bring the Pittsburgh Water and Sewer Authority into compliance with the Public Utility Code, also shall address: (1) the future implementation of a stormwater tariff; (2) a plan to address lead levels in the water supply and the replacement of lead service lines; (3) a metering plan identifying unmetered accounts and plans to meter all customers; (4) plans to convert to the Uniform Standards of Accounts; (5) a Self-Certification Form for Security Planning and Readiness; (6) plans to fully comply with the billing, collection, complaint, and termination rules of Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations; (7) Bureau of Consumer Services access to PWSA customer service management information system.⁵

23. Denied. The OSBA is without knowledge or information sufficient to form a belief as

⁴ *Opinion* entered March 26, 2020 ("*Opinion*"), at p. 4.

⁵ *FIO*, at p. 45.

to the truth of the averments in Paragraph 23 regarding the City's beliefs. The remaining averments in Paragraph 23 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 23 are denied. By way of further answer, the issues decided by the Commission in the *Final Order* are properly resolved in the Compliance Plan proceeding. "PWSA cannot circumvent the Code and Commission mandates by making separate arrangements through a Cooperation Agreement with the City."⁶ Any issues not already decided by the Commission that have bearing on the 2019 Cooperation Agreement will be addressed in the pending proceeding at Docket No. U-2020-3017970.

24. Admitted in part, denied in part. It is admitted that the proceedings the City lists in Paragraph 24 fall under the Commission's regulatory authority. To the extent the City argues or implies these are the only proceedings under the Commissions' authority, the averments in Paragraph 24 are denied.

25. Admitted. By way of further response, the City, not a party to these proceedings, did not participate in this stage of the proceedings.

26. Admitted.

27. Admitted in part, denied in part. It is admitted that the City filed its *Petition to Intervene* on April 9, 2020. The remaining averments in Paragraph 27 set forth a legal argument to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, the *Petition to Intervene* is not timely filed.

28. Admitted. By way of further answer, the *Opinion* and *Final Order* speak for themselves.

29. Admitted. By way of further answer, the *Opinion* and *Final Order* speak for themselves.

30. The averments in Paragraph 30 constitute a prayer for relief to which no response is

⁶ *Opinion*, at p. 59.

necessary. By way of further answer, the City's request for reconsideration should be denied. First, the City is not a party to this proceeding and does not have standing under 66 Pa. C.S. § 703(f) to request consideration. Second, the issues decided by the Commission in the *Opinion* and *Final Order* are issues correctly resolved in the Compliance Plan proceeding. These issues should not and need not be examined in the context of the City Cooperation Agreement. The decisions by the Commission in the *Opinion* and *Final Order* bring PWSA into greater compliance with the Public Utility Code and Regulations.

31. Admitted.

32. The averments in Paragraph 32 are an introductory paragraph to which no response is required. To the extent a response is necessary, it is denied that the City meets the standard for reconsideration. The City is not a party to this proceeding, has no standing to seek reconsideration, and did not participate in any stage of the proceedings until after the *Final Order* was issued by the Commission.

33. Denied. By way of further answer, the Commission identified negative *ratepayer* impacts as follows:

We agree with the ALJs that issuing anything less than bills based on full metered rates once meters are installed: (1) prevents the PWSA from collecting tariffed revenue; (2) results in charging discriminatory rates; (3) "condone[s] and perpetuate[s] the imbalanced, discriminatory relationship the City has had with the PWSA for longer than necessary;" and (4) requires "non-City ratepayers to foot their full bill for future rate increases while the City is still receiving free water service." See R.D. at 127.

....

We are of the opinion that simply because City-owned buildings and properties are not metered does not permit the allowance of free service. Commission Regulations permit flat rate service pending implementation of a reasonable metering program or under special circumstances as may be permitted by the

Commission for good cause. 52 Pa. Code § 65.7. Therefore, implementation of a flat rate in the PWSA's tariff for unmetered City-owned buildings and properties will ensure that the City pays the PWSA for its service and alleviate the burden now placed upon the PWSA customers.⁷

The Commission also stated, "Private consumers should not be compelled to bear any part of the cost of the service rendered to Pittsburgh except as they contribute as taxpayers to the general fund of the City."⁸

34. Admitted in part, denied in part. It is admitted that the City received PWSA's Compliance Plan. It is denied that the City did not have notice of the Compliance Plan proceedings. The averment in Paragraph 34 inferring that the City did not have the opportunity to advocate its position in this proceeding is denied. The City had notice of the Compliance Plan proceeding and could have intervened and advocated its position, but chose not to file a petition to intervene until after the *Final Order* was issued.

35. Admitted in part, denied in part. It is admitted that the *Opinion* summarizes the argument of the Commission's Bureau of Investigation and Enforcement ("I&E") that "that evidence suggests that this unbilled usage represents upwards of \$11.4 million in foregone annual revenue."⁹ It is denied that I&E's argument is "unsupported speculation." As found by the Commission based on substantial evidence in the record:

The City currently does not pay for water or wastewater service and many City-owned properties are not metered. As a result, other customer classes are currently absorbing the costs to serve the City.

...

Although the PWSA and the City may not have had the traditional independent utility-customer relationship before coming under Commission jurisdiction as evidenced, among other things, by the PWSA's agreement to provide the City with 600 million gallons of water each year at no cost [*citing* PWSA Hearing Exh. 1, Appendix B at §§ VII.C & VII.D] they must now.¹⁰

⁷ *Opinion*, at p. 59, 61.

⁸ *Opinion*, at p. 60.

⁹ *Opinion*, at p. 61-62.

¹⁰ *Opinion*, at p. 58, 59.

36. The averments in Paragraph 36 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 36 are denied, and strict proof thereof is demanded. By way of further answer, PWSA is independent from the City and is under the Commission's jurisdiction. "PWSA cannot circumvent the Code and Commission mandates by making separate arrangements through a Cooperation Agreement with the City."¹¹

37. The averments in Paragraph 36 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 36 are denied, and strict proof thereof is demanded. By way of further answer, the issues decided by the Commission in the Opinion and Final Order are issues correctly resolved in the Compliance Plan proceeding. These issues should not and need not be examined in the context of the City Cooperation Agreement. The decisions by the Commission in the Opinion and Final Order bring PWSA into greater compliance with the Public Utility Code and Regulations. The remainder of the terms of the City Cooperation Agreement, not preempted by decisions in the Compliance Plan proceeding Opinion and Final Order, may be examined in the proceeding at Docket No. U-2020-3017970.

38. Denied. The Commission properly reached its decision rejecting any step-billing plan for City-owned properties after a full evidentiary record was produced on this issue during the Compliance Plan proceedings.

39. Admitted. By way of further answer, the *Opinion* speaks for itself.

40. The averments in Paragraph 40 set forth a legal argument to which no response is

¹¹ *Opinion*, at p. 59.

required. To the extent a response is required, the averments in Paragraph 40 are denied. By way of further answer, the Commission considered PWSA's arguments in reaching its decision,¹² and PWSA's arguments were similar to those the City now advocates in its *Petition for Reconsideration*.

41. Admitted in part, denied in part. It is admitted that the City disagrees with and requests reconsideration of the *Final Order*. It is denied that the City meets the standard for reconsideration. The City is not a party to this proceeding, has no standing to seek reconsideration, and did not participate in any stage of the proceedings until after the *Final Order* was issued by the Commission.

42. Denied. The OSBA is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 42.

43. Admitted. By way of further answer, the *Final Order* speaks for itself.

44. The averments in Paragraph 44 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 44 are denied. By way of further answer, the issues decided by the Commission in the *Final Order* are properly resolved in the Compliance Plan proceeding, which included a full and fair review of these issues. "PWSA cannot circumvent the Code and Commission mandates by making separate arrangements through a Cooperation Agreement with the City."¹³ Any issues not already decided by the Commission that have bearing on the 2019 Cooperation Agreement will be addressed in the pending proceeding at Docket No. U-2020-3017970.

45. Denied. The OSBA is without knowledge or information sufficient to form a belief as to

¹² *Opinion*, at p. 54-55.

¹³ *Opinion*, at p. 59.

the truth of what the City believes. The remaining averments in Paragraph 45 set forth a legal argument to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, if there has been an abuse of managerial discretion, and the public has been adversely affected thereby, then the Commission is empowered to intervene in the management of a utility. *Metropolitan Edison Company*, 62 Pa. Cmwlth. At 466-467; 437 A.2d at 80. The Commission correctly determined that:

[B]ased on the record evidence, we find that the continuation of the residency requirement is an abuse of managerial discretion and will adversely affect the public interest for the reasons discussed below....In sum, it has been demonstrated in this proceeding, in large part through the PWSA's own admission, that the residency requirement results in a lack of adequate employees in the PWSA's workforce and a lack of reasonable levels of redundancy among the PWSA's workforce. These results show that if the residency requirement was permitted to be implemented in the Compliance Plan, it would appear to frustrate and seriously impede the PWSA's ability to comply with Section 1501 of the Code.¹⁴

As a result, the Commission correctly directed PWSA to remove its residency requirement from its Compliance Plan.¹⁵

46. Admitted in part, denied in part. It is admitted that the City requests reconsideration of the *Final Order*. It is denied that the City meets the standard for reconsideration. The City is not a party to this proceeding, has no standing to seek reconsideration, and did not participate in any stage of the proceedings until after the *Final Order* was issued by the Commission.

47. Admitted.

48. Admitted.

¹⁴ *Opinion*, at p. 81.

¹⁵ *Opinion*, at p. 83.

III. CONCLUSION

In view of the foregoing, the Office of Small Business Advocate respectfully requests that the Pennsylvania Public Utility Commission dismiss the City's *Petition for Reconsideration* or, in the alternative, deny the relief requested in the City's *Petition for Reconsideration*.

Respectfully submitted,

/s/ Erin K. Fure

Erin K. Fure
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For:

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Dated: April 20, 2020

VERIFICATION

I, John R. Evans, hereby state that the facts set forth herein 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: 4/20/20

John R. Evans
(Signature)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the	:	Docket No. M-2018-2640802
Public Utility Code Regarding Pittsburgh	:	Docket No. M-2018-2640803
Water and Sewer Authority – Stage 1	:	
	:	
Petition of The Pittsburgh Water and	:	Docket No. P-2018-3005037
Sewer Authority for Approval of Its Long-	:	Docket No. P-2018-3005039
Term Infrastructure Improvement Plan	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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DATE: April 20, 2020

/s/ Erin K. Fure

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