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April 9, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Petition of the Pittsburgh Water and Sewer Authority for Approval of Its Long-Term
Infrastructure Improvement Plan; Docket Nos. P-2018-3005037 and P-2018-3005039

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Pittsburgh Water and Sewer Authority's ("PWSA") Motion to Hold in Abeyance the Stage 2 Stormwater Compliance Plan with regard to the above-referenced matter. The Motion is in reference to PWSA's Stage 2 Compliance Plan: Stormwater which was filed on April 9, 2013. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

cc: Certificate of Service (via email only)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PWSA's Motion to Hold in Abeyance the Stage 2 Stormwater Compliance Plan 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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April 13, 2021



Deanne M. O'Dell, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the	:	
Public Utility Code Re Pittsburgh Water	:	Docket No. M-2018-2640802 (water)
And Sewer Authority	:	M-2018-2640803 (wastewater)
	:	
And	:	And
	:	
Petition for The Pittsburgh Water and	:	Docket No. P-2018-3005037 (water)
Sewer Authority for Approval of Its Long-	:	P-2018-3005039 (wastewater)
Term Infrastructure Improvement Plan	:	

**MOTION OF THE PITTSBURGH WATER AND
SEWER AUTHORITY TO HOLD IN ABEYANCE THE
STAGE 2 STORMWATER COMPLIANCE PLAN**

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Date: April 13, 2021

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I. INTRODUCTION

Pursuant to Sections 1.15 and 5.103 of the Pennsylvania Public Utility Commission's ("Commission" or "PUC") regulations, 52 Pa. Code §§ 1.15 and 5.103, The Pittsburgh Water and Sewer Authority ("PWSA" or "Authority") submits this Motion to Hold in Abeyance its Stage 2 Compliance Plan regarding PWSA's stormwater operations and tariff ("Stormwater Compliance Plan") filed on April 9, 2021. Through this Motion, PWSA respectfully requests that the proceeding to address the Stormwater Compliance Plan be held in abeyance pending resolution of PWSA's base rate case filed on April 13, 2021 which includes its request for approval of a stormwater tariff and stormwater fee.¹

This request to hold the Compliance Plan Proceeding in abeyance is based on the difficulty of determining what specific issues would be addressed in the Compliance Plan Proceeding and what issues would be addressed in the rate case and how to handle overlapping issues. Given PWSA's desire to implement a stormwater fee in early 2022 and the focus on related stormwater issues during the rate case, PWSA believes an efficient use of resources would be to focus on the stormwater rate case and then, after the Commission's rate case order is entered, reopen the Compliance Plan Proceeding to address any remaining stormwater issues. A similar approach was taken regarding the staging of PWSA's initial 2018 rate case and Stage 1 of the Compliance Plan proceeding. As part of the initial rate 2018 rate case, the parties identified issues which were better suited to the Compliance Plan Stage 1 Proceeding and, upon approval

¹ PWSA filed Stage 2 Compliance Plan: Chapters 14 & 56, DSLPA and Collections on April 9, 2021 at the same time it filed its Stormwater Compliance Plan. On that same date, PWSA also filed a Petition for Amendment of the Commission's February 4, 2021 Final Order Regarding Procedural Process for Customer Service and Collections Issues. Through the Petition, PWSA requested a modified procedural process for customer service issues, not an abeyance as requested in this Motion.

of the Commission's order, agreed to address the issues in the Compliance Plan Stage 1 proceeding after the initial rate case was final.

PWSA believes a similar approach makes sense at this time. Focusing first on the stormwater rate case will assist in evaluating what issues may be better suited for the Compliance Plan Proceeding after the rate case is finished. Importantly, PWSA is not proposing to preclude the discussion of any stormwater related issue in the rate case and, consistent with Chairman Dutrieuille's December 3, 2020 Statement regarding PWSA's 2020 rate case, recognizes (and welcomes) the ability of Commission Staff to issue directed questions about the Stormwater Stage 2 Compliance Plan with the rate case suspension order. Such directed questions would be a useful guide to PWSA and other interested stakeholders as they proceed with the rate case proceeding.

In originally establishing two stages for review of the PWSA Compliance Plan by a Secretarial Letter issued on November 28, 2018 ("*November 2018 Secretarial Letter*"), the Commission noted that the focus for Stage 2 would be on Chapter 14 and Chapter 56 customer service issues and the development of a stormwater tariff.² At that time, the Commission indicated that "[t]o the extent that perceived conflicts may arise between the PWSA rate proceeding and the staged litigation of the PWSA Compliance Plan the Commission will entertain resolution of those conflicts by motion or petition within Stage 1 of the PWSA Compliance Plan."³ In its Opinion and Order entered February 4, 2021 ("*February 2021 Order*"), the Commission reiterated this point, noting that it would continue to entertain resolution of those conflicts within Stage 2 of the Compliance Plan.⁴

² *November 2018 Secretarial Letter* at 3.

³ *November 2018 Secretarial Letter* at 4.

⁴ *February 2021 Order* at 65.

Given the Commission's direction to file the Stormwater Compliance Plan by April 9, 2021 and PWSA's need to file a base rate case on April 13, 2021, PWSA and all interested parties are currently facing the challenge of litigating both the Stormwater Compliance Plan and PWSA's 2021 base rate case on nearly identical timelines without a great deal of certainty about which issues belong in which proceeding. Given this uncertainty and likely overlap between stormwater issues addressed in these two proceedings, PWSA is submitting this motion to hold the Stormwater Compliance Plan in abeyance until the rate case has been resolved. As part of the rate case to develop its stormwater tariff, PWSA anticipates that a significant number of stormwater issues which overlap the Compliance Plan process would be addressed and those that are not could be resolved through the Compliance Plan process. This approach will allow stormwater issues to be addressed efficiently and prevent duplication of effort by PWSA, the parties, and the Commission.

In further support of this Petition, PWSA states as follows:

II. BACKGROUND

1. On April 1, 2018, the PWSA's water⁵ and wastewater⁶ operations became subject to regulation by the Commission pursuant to Section 3202(a)(1) of the Public Utility Code.⁷

⁵ PWSA provides water service to approximately 80,000 residential, commercial and industrial customers in: portions of the City of Pittsburgh (Pittsburgh or City); the Borough of Millvale; and portions of Reserve, O'Hara, and Blawnox Townships, Allegheny County.

⁶ PWSA provides wastewater conveyance service to customers located in the City and conveys wastewater for portions of twenty-four (24) neighboring communities.

⁷ 66 Pa. C.S. § 3202(a)(1).

2. On September 28, 2018, as directed by the Chapter 32 of the Public Utility Code,⁸ PWSA filed both its Compliance Plan⁹ and its LTIP¹⁰ with the Commission.¹¹

3. The parties were able to reach an agreement on a vast majority of the issues on Stage 1 of the Compliance Plan, and on September 13, 2019, the parties filed a Joint Petition for Partial Settlement (“Joint Petition” or “Partial Settlement”).

4. In their Recommended Decision (“RD”), the Administrative Law Judges (“ALJs”) found that the Partial Settlement was in the public interest and recommended its approval without modification. The RD also made recommendations on the topics and issues upon which the parties could not agree. Regarding the litigated issues, PWSA, the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), and Pittsburgh UNITED (“UNITED”) filed Exceptions on November 18, 2019, and Replies to Exceptions on December 3, 2019.

5. In the Opinion and Order entered on March 26, 2020 (“*March 2020 Order*”), the Commission adopted, as modified, the Partial Settlement. Modifications to the Partial Settlement centered on the partial replacement of lead service lines. The Commission also adjudicated the issues that were not resolved by the Partial Settlement.

6. On April 10, 2020, PWSA filed a Petition for Reconsideration, Clarification and/or Amendment, and UNITED filed a Petition for Reconsideration and Clarification. On April 20,

⁸ 66 Pa.C.S. § 3201 to 3209. On December 21, 2017, Governor Wolf signed Act 65 of 2017 into law whereby the Pennsylvania Public Utility 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”).

⁹ Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater).

¹⁰ Docket Nos. P-2018-3005037 (water) and P-2018-3005039 (wastewater).

¹¹ See 66 Pa.C.S. § 3204(b). The Commission established a due date of September 28, 2018, for the filing by PWSA of a Compliance Plan and a LTIP. See *Implementation of Chapter 32 of the Public Utility Code*, Docket Nos. M 2018-2640802 (water) and M-2018-2640803 (wastewater), (Final Implementation Order entered Mar. 15, 2018 (“FIO”).

2020, I&E, OSBA and UNITED filed Answers to the PWSA Petition, and PWSA filed an Answer to the UNITED Petition.

7. By Opinion and Order entered on June 18, 2020 (“*June 2020 Order*”), the Commission ordered that the modifications to the Partial Settlement set forth in the *March 2020 Order* relating to partial LSL replacements (“LSLRs”) be held in abeyance while the parties conferred on the remaining issues. The Commission also directed PWSA to file its Proposal for addressing these issues by September 16, 2020.¹²

8. Upon the request of PWSA, the Commission granted a 14-day extension, making the Proposal on LSLRs due by September 30, 2020. PWSA filed its Proposal on September 30, 2020, and OCA and UNITED filed their respective Comments to the Proposal on October 15, 2020. PWSA filed Reply Comments on October 26, 2020.

9. Through its *February 2021 Order*, the Commission resolved the contested issues relating to PWSA’s Proposal for partial LSLRs. Further, as the *February 2021 Order* provided resolution of the remaining Stage 1 Compliance Plan issues that have not otherwise been deferred to Stage 2, the Commission found it appropriate to provide direction regarding the commencement of Stage 2 of the Compliance Plan proceeding.

10. In the *February 2021 Order*, the Commission reiterated directives originally set forth in a Secretarial Letter dated January 24, 2020 (“*January 2020 Secretarial Letter*”), where it provided additional direction regarding Stage 2 of PWSA’s Compliance Plan.

11. In the *January 2020 Secretarial Letter*, the Commission directed that Stage 2 of PWSA’s Compliance Plan shall proceed as follows:

- Filing of Stage 2 Compliance Plan by PWSA within 60 days;

¹² *June 2020 Order* at 158.

- Filing of comments by stakeholders within 20 days after filing of Stage 2 Compliance Plan;
- Issuance of Secretarial Letter by the Commission assigning Stage 2 to the OALJ, including Staff's directed questions relating to: (a) PWSA compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations, and (b) PWSA operations as a regulated stormwater utility, within 45 days after filing of Stage 2 Compliance Plan;
- Evidentiary hearings conducted by OALJ to address the Stage 2 Initial Report and directed questions; and
- Issuance of Recommended Decision by OALJ within 9 months of receiving the assignment of Stage 2 Compliance Plan.

12. PWSA simultaneously filed two Stage 2 Compliance Plans – one for Stormwater and one for Customer Service Issues – on April 9, 2021. On that same date, PWSA filed a Petition for Amendment of the Commission's February 4, 2021 Final Order Regarding Procedural Process for Customer Service and Collections Issues. Through the Petition, PWSA requested a modified procedural process for customer service issues, not an abeyance as requested in this Motion.

13. Simultaneously with the filing of this Motion, PWSA is filing a combined water, wastewater, and stormwater base rate case seeking.¹³ As part of PWSA's base rate case, PWSA is submitting a proposed stormwater tariff and is requesting to implement stormwater rates for the first time. As a result, it is anticipated that the rate case will address a broad range of issues related to stormwater service.

14. Through this Motion, PWSA requests that the Stormwater Compliance Plan be held in abeyance pending resolution of PWSA's base rate case. As discussed below, PWSA submits that it will be most efficient to address the full range of stormwater issues as part of the

¹³ Docket Nos. R-2021-3024773 (water); R-2021-3024774 (wastewater); and R-2021-3024779 (stormwater).

rate case, and then proceed with any remaining issues regarding the Stormwater Compliance Plan after the base rate case has concluded.

III. ARGUMENT

15. The Commission's regulation at 52 Pa. Code § 1.15 provides that a motion to request a continuance or an extension of time to perform a required act may be granted for good cause shown.¹⁴

16. PWSA submits that holding the Stormwater Compliance Plan in abeyance while stormwater issues are addressed in the base rate case is the most efficient use of resources by the Authority, the Commission, and the interested parties. Importantly determining what stormwater issues should be addressed in the Compliance Plan Proceeding and what should be addressed in the rate case is a difficult task as many issues are likely to overlap. Apart from the difficulty of separating which issues belong in which proceeding, proceeding with both matters at the same time would result in a duplication of efforts.

17. Because PWSA anticipates significant overlap between stormwater issues being addressed in the rate case and in the Stormwater Compliance Plan and the difficulty of easy separation, PWSA believes focusing first on the rate case and then dealing with remaining issues in the Compliance Plan Proceeding after the rate case has concluded is the most efficient and reasonable way to proceed. PWSA submits that addressing stormwater-related issues first as part of the rate case will allow PWSA to put its initial stormwater tariff into effect and likely resolve many issues related to stormwater utility operations. Any remaining issues could then be addressed through the Stormwater Compliance Plan proceeding after the rate case has concluded.

¹⁴ See, e.g., *Motion of PPL Electric Utilities Corp. to Hold This Proceeding in Abeyance Pending Resolution of the Base Rate Case*, Order Holding Proceeding in Abeyance, Docket No M-00072020 (entered July 25, 2007) (granting PPL's motion to hold its Universal Service and Energy Conservation Plan in abeyance pending resolution of its base rate case).

18. PWSA is willing to address all issues related to stormwater utility service as part of the base rate case. Holding the Stormwater Compliance Plan in abeyance will not affect the parties' ability to fully investigate PWSA's stormwater proposal in the context of the base rate case.

19. In her December 3, 2020 Statement regarding PWSA's 2020 rate case, Chairman Dutrieuille stated that "Commission Staff retains the ability to issue directed questions to the Authority before it files its next combined water, wastewater, and stormwater tariff. Further, the Commission may also exercise its prerogative to issue stormwater related inquiries upon action to suspend any future combined tariff filing."¹⁵ Per Chairman Dutrieuille's statement, Commission Staff will have the ability to issue directed questions with the rate case suspension order. This would not be affected by holding the Stormwater Compliance Plan in abeyance. Moreover, such directed questions from Staff could be useful for the parties as they proceed to address stormwater issues in the rate case.

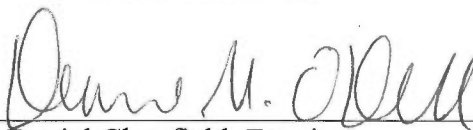
20. As discussed above, through its *November 2018 Secretarial Letter* and *February 2021 Order*, the Commission has retained the ability to resolve any conflicts between the staged Compliance Plan process and PWSA's base rate case, and has stated that it will entertain potential resolutions of those conflicts by motion or petition. As such, the Commission has anticipated this type of situation arising and has expressed its willingness to resolve such conflicts. Holding the Stormwater Compliance Plan in abeyance is a reasonable way to alleviate the challenges that addressing stormwater issues in two simultaneous proceedings would create, while ensuring that the ultimate goal of full compliance with Commission regulations is attained.

¹⁵ Docket Nos. R-2020-3017951 and R-2020-3017970.

IV. CONCLUSION

For the reasons set forth above, PWSA respectfully requests that the Commission grant this Motion and hold the Stormwater Compliance Plan in abeyance pending resolution of PWSA's base rate case.

Respectfully submitted,

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

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Date: April 13, 2021

Attorneys for
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VERIFICATION

I, Tony Igwe, hereby state that: (1) I am the Senior Group Manager, Stormwater for The Pittsburgh Water and Sewer Authority ("PWSA"); (2) the facts set forth in the foregoing Motion to Hold In Abeyance are true and correct (or are true and correct to the best of my knowledge, information and belief); and, (3) 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: 04/12/2021 | 3:18 PM EDT

DocuSigned by:

Tony Igwe

Tony Igwe

Senior Group Manager, Stormwater
The Pittsburgh Water and Sewer Authority