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| Public Meeting held May 20, 2021 |
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| Commissioners Present: |
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| Gladys Brown Dutrieuille, ChairmanDavid W. Sweet, Vice ChairmanJohn F. Coleman, Jr.Ralph V. Yanora |
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| Pennsylvania Public Utility Commissionv.Pittsburgh Water and Sewer Authority - Stormwater | R-2021-3024779C-2021-3025474C-2021-3025521 |
| Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 2 – Stormwater | M-2018-2640802M-2018-2640803 |

**ORDER**

**BY THE COMMISSION:**

On April 13, 2021, the Pittsburgh Water and Sewer Authority – Stormwater (PWSA-SW), Utility Code 2423775, filed Tariff Storm Water - Pa. P.U.C. No. 1 proposing a multi-year rate increase that will raise PWSA-SW’s total annual operating revenues for stormwater service by approximately $17.8 million, or 3,118.3% through rates effective January 12, 2022, and by approximately $5.9 million, or 32.3%, through rates effective January 12, 2023.[[1]](#footnote-2)

On April 23, 2021, the Office of Consumer Advocate filed a Formal Complaint at Docket No. C-2021-3025474. On April 27, 2021, the Office of Small Business Advocate filed a Formal Complaint at Docket No. C-2021-3025521. Pursuant to the Public Utility Code, 66 Pa.C.S. § 1308(d), the filing will be suspended by operation of law until January 12, 2022, unless permitted by Commission Order to become effective at an earlier date.

By a Secretarial Letter dated January 24, 2020 at Docket Nos. M-2018-2640802 and M-2018-2640803 (January 2020 Secretarial Letter), the Commission provided direction regarding Stage 2 of the Pittsburgh Water and Sewer Authority’s (PWSA’s) Compliance Plan. Among other things, the January 2020 Secretarial Letter directed that, no later than forty-five (45) days after the filing of PWSA’s Stage 2 materials, the Commission would, via Secretarial Letter, assign Stage 2 of the Compliance Plan to the Office of Administrative Law Judge for the resolution of any matters that PWSA or interested parties may seek to develop, and that the Commission would attach to that Secretarial Letter the Stage 2 reports and directed questions authored by Commission staff regarding issues to be addressed by PWSA and interested parties. Regarding these Stage 2 reports and directed questions, the January 2020 Secretarial Letter noted that the Bureau of Consumer Services Stage 2 report and directed questions must address matters relating to PWSA compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations, and that the Bureau of Technical Utility Services (TUS) Stage 2 report and directed questions (Stormwater Report and Directed Questions) must address matters related to PWSA operations as a regulated stormwater utility.

On April 9, 2021, PWSA filed its Stage 2 Compliance Plan for stormwater service at Docket Nos. M-2018-2640802 and M-2018-2640803. On April 13, 2021, PWSA filed a Motion to Hold in Abeyance the Stage 2 Stormwater Compliance Plan (Motion) at the same dockets. The Motion noted the statement by Chairman Gladys Brown Dutrieuille dated December 3, 2020, which indicated that the Commission may exercise its prerogative to issue stormwater related inquiries upon action to suspend any future combined tariff filing.[[2]](#footnote-3) Motion at 8. The Motion also indicated that directed questions from Commission Staff could be useful for the parties as they proceed to address stormwater issues in the rate case. *Id*. The Commission is addressing the Motion by separate Order at Docket Nos. M-2018-2640802 and M-2018-2640803.

In sum, we agree that it will be beneficial for parties in the rate case to have directed questions from Commission staff, specifically the Stormwater Report and Directed Questions, which is appended to this Order as Attachment B. Utilizing the Stormwater Report and Directed Questions is preferred, rather than creating specific directed questions for this Order and then again for review of the Stage 2 Stormwater Compliance Plan. However, attaching a copy of the TUS Stormwater Report and Directed Questions to this Order should not be construed as the Commission approving any of the content therein. This attached document does not have the force and effect of law or a legal determination and is not binding upon the Commonwealth or the Commission. Rather, the Commission provides this document to assist the parties as they proceed to address stormwater issues in the rate case.[[3]](#footnote-4)

Investigation and analysis of this proposed tariff and the supporting data indicates that the proposed changes in rates, rules, and regulations may be unlawful, unjust, unreasonable, and contrary to public interest. It also appears that consideration should be given to the reasonableness of PWSA-SW’s existing rates, rules, and regulations; **THEREFORE**,

**IT IS ORDERED:**

1. That an investigation on Commission motion be, and hereby is, instituted to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the Pittsburgh Water and Sewer Authority - Stormwater’s proposed Tariff Storm Water - Pa. P.U.C. No. 1.
2. That the Pittsburgh Water and Sewer Authority - Stormwater’s proposed Tariff Storm Water - Pa. P.U.C. No. 1 is suspended by operation of law until January 12, 2022, unless otherwise directed by Order of the Commission.
3. That within ten (10) days following the entry date of this Order, pursuant to 52 Pa. Code § 53.71, the Pittsburgh Water and Sewer Authority - Stormwater shall e‑file, or if necessary file via email directly to Secretary Rosemary Chiavetta at rchiavetta@pa.gov, a tariff supplement, which shall bear no effective date, with the Commission and post the tariff supplement at the offices of the Pittsburgh Water and Sewer Authority – Stormwater announcing that the aforementioned tariff is suspended until January 12, 2022. A sample copy of a suspension supplement is provided in Attachment A of this Order.
4. That the investigation instituted in Ordering Paragraph No. 1 of this Order shall include consideration of the lawfulness, justness, and reasonableness of the existing rates, rules, and regulations of the Pittsburgh Water and Sewer Authority - Stormwater.
5. That this case be assigned to the Office of Administrative Law Judge for Alternative Dispute Resolution, if possible, and for the prompt scheduling of such hearings as may be necessary culminating in the issuance of a recommended decision.
6. That a copy of this Order shall be served upon the Pittsburgh Water and Sewer Authority - Stormwater, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and any persons who have filed formal complaints against the proposed tariff.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 20, 2021

ORDER ENTERED: May 20, 2021

ATTACHMENT A

Sample Suspension Supplement

Supp. No. \_\_\_\_\_\_ to

\_\_\_\_\_\_\_ Pa. P.U.C. No. \_\_\_\_\_.

(COMPANY NAME)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(TERRITORY SERVED BY COMPANY)

The application of rates proposed in Tariff \_\_\_\_\_\_\_\_\_\_ Pa. P.U.C. No. \_\_\_\_\_\_ filed to become effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, is hereby suspended until \_\_\_\_\_\_\_\_\_\_\_\_\_, at Docket No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Issued in compliance with Title 66 Pa.C.S. § 1308.

ATTACHMENT B

**Pennsylvania Public Utility Commission**

**Technical Staff Report**

**and Directed Questions**

**Stage 2**

Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 2 – Stormwater

Docket No. M-2018-2640802 (Water)

Docket No. M-2018-2640803 (Wastewater)

May 20, 2021



By Secretarial Letter dated September 26, 2018 (September 2018 Secretarial Letter), at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater) the Commission established a procedure to refer the Pittsburgh Water and Sewer Authority (PWSA) Compliance Plan (CP) to the Office of Administrative Law Judge (OALJ) for hearings. The September 2018 Secretarial Letter also directed Commission technical staff to develop an initial report to accompany that referral to OALJ. By Corrected Secretarial Letter dated November 28, 2018 (November 2018 Secretarial Letter), the Commission established a two-stage review of PWSA’s CP, with Stage 1 prioritizing health and safety issues related to the safe, adequate, reliable, and reasonable provision of water service and the revenues necessary to support adequate water quantity and quality and Stage 2 focusing on Chapter 56 billing and collection issues and development of a stormwater tariff.  The November 2018 Secretarial Letter included the Technical Staff Initial Report and Directed Questions – Stage 1 (Stage 1 Initial Report), which listed a variety of specific questions PWSA and the parties were directed to address as part of the Stage 1 litigation.

By a Secretarial Letter dated January 24, 2020 (January 2020 Secretarial Letter), the Commission provided additional direction regarding Stage 2 of PWSA’s CP. Among other things, the January 2020 Secretarial Letter reiterated that PWSA must segregate services and property such that the Commission and parties are able to engage in a meaningful review of its CP.

On March 6, 2020, PWSA filed base rate cases for its water and wastewater divisions at Docket Nos. R-2020-3017951 (Water) and R-2020-3017970 (Wastewater). By Order entered December 3, 2020, the Commission granted the Joint Petition for Settlement filed September 30, 2020, at the above referenced dockets, and adopted the settlement. Within the Settlement, the parties agreed to request consolidation of Stage 2 stormwater issues with PWSA’s future water, wastewater, and stormwater rate cases.

Neither the November 2018 Secretarial Letter, nor the Commission’s approval of the Rate Case Settlement, were intended to obviate PWSA’s responsibility to file with the Commission a compliance plan for stormwater service. By Commission Order entered February 4, 2021, PWSA was directed to file revisions to the PWSA CP detailing how PWSA will reach compliance with the Public Utility Code and Commission regulations relative to Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations for water and wastewater services; stormwater services; and issues deferred from Stage 1 of the Pittsburgh Water and Sewer Authority Compliance Plan proceeding.[[4]](#footnote-5)

On April 9, 2021, PWSA filed a document titled “Stage 2 Compliance Plan: Stormwater” (Stormwater CP), at Docket Nos. M-2018-2640802 and M-2018-2640803 accompanied by a Petition for Amendment of the Commission’s February 4, 2021 Final Order Regarding Procedural Process for Customer Service and Collection Issues (Petition). On April 13, 2021, PWSA filed a Motion to Hold in Abeyance the consideration of Stage 2 Stormwater CP (Motion) at the same dockets. Also, on April 13, 2021, PWSA filed a combined base rate case at Docket Nos. R-2021-3024773 (water), R-2021-3024774 (wastewater), and R-2021-3024779 (stormwater).

In the Motion, PWSA noted a statement by Chairman Gladys Brown Dutrieuille dated December 3, 2020, which indicated that the Commission may exercise its prerogative to issue stormwater related inquiries upon action to suspend any future combined tariff filing.[[5]](#footnote-6) Motion at 8. The Motion also indicated that directed questions from Commission Staff could be useful for the parties as they proceed to address stormwater issues in the rate case. *Id*. The Commission is addressing the Motion by separate Order at Docket Nos. M-2018-2640802 and M-2018-2640803.

The Technical Staff Report and Directed Questions – Stage 2 (Stage 2 Report) are being attached to the Order to suspend PWSA’s Stormwater rate case (Stormwater Suspension Order) adopted May 20, 2021, at Docket R-2021-3024779, and are based on the Stormwater CP and other documents filed with the Commission. The purpose of including the Stage 2 Report with the Stormwater Suspension Order is to assist PWSA and interested parties in developing an adequate record for the Commission to review and approve a Stormwater tariff and, after the conclusion of the tariff proceeding, a Stormwater CP that is consistent with the goals of 66 Pa.C.S. § 3204(b). Namely, Section 3204(b) directs the CP to work to:

[B]ring [PWSA’s] existing information technology, 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 . . .

66 Pa.C.S. § 3204(b). In addition, Section 3204(c) provides direction on how the Commission is to conduct its review of the CP. Section 3204(c) provides:

The commission shall review the compliance plan filed by [PWSA] under subsection (b) and may order [PWSA] to file a new or revised compliance plan if the compliance plan fails to adequately ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service.

66 Pa.C.S. § 3204(c). The Stage 2 Report works to ensure that areas addressed in Section 3204(b) are subject to the review mandated by Section 3204(c). Also, the matters addressed in the Stage 2 Report are tentative given Commission authority to cause PWSA to reiterate its CP as necessary to achieve compliance with Section 3204(c). The Stormwater CP generally follows the organizational structure of Commission regulations and the report follows suit. Because of this, parties should not assign relative importance or priority based on whether issues appear earlier or later in the report.

As indicated above, PWSA and parties are to address the questions and issues in the Stage 2 Report to the extent that each believes appropriate and necessary to obtain a CP suitable for approval under 66 Pa.C.S. § 3204.

**Memorandum of Understanding with the City of Pittsburgh**

The Stormwater CP at Page 4 identifies that a Memorandum of Understanding (MOU) is being developed between PWSA and the City of Pittsburgh (City) regarding the maintenance of stormwater infrastructure. The Stormwater CP also describes that PWSA and the City are developing a detailed agreement regarding other stormwater management responsibilities of PWSA and the required coordination and cost-sharing with the City.[[6]](#footnote-7) This includes planning, design implementation, and maintenance of stormwater related capital projects. While PWSA notes the content and timeline for the additional agreement is still being determined, such agreements are important for parties to consider for potential impacts to operations and rates.

Parties should discuss an appropriate timeline for PWSA to complete and file applicable agreements with the Commission.

**Projected Expenditures**

The Stormwater CP at Page 14 identifies PWSA’s stormwater program revenue requirements for FY 2022 will total approximately $36.7 million and PWSA’s initial stormwater tariff filing at Docket No. R-2021-3024779 identified capital expenditures related to stormwater will increase from approximately $15.8 million in 2020 to $34.7 million in 2021, $21.7 million in 2022, and $13.2 million in 2023. Parties should discuss:

1. The allocation of costs assigned to the stormwater revenue requirement for costs shared by water, wastewater and stormwater service.
2. The criteria a proposed project must meet, in terms of cost to benefit, to be included in the Capital Investment Plan (CIP).
3. Each of the stormwater projects listed in the CIP and the method PWSA expects to use to finance those projects.

**52 Pa. Code § 53.53 – Information to be furnished with proposed general rate increase filings in excess of $1 million**

Regarding 52 Pa. Code § 53.53, parties should discuss:

1. The filing requirements for proposed changes in stormwater rates and/or services and whether any additional filing requirements may be necessary.
2. The applicability of the filing requirements for water and wastewater utilities pursuant to 52 Pa. Code § 53.53(a)(4) to PWSA for proposed changes in stormwater rates and/or services.

**52 Pa. Code § 65.2 – Accidents**

The Stormwater CP at Page 18 indicates that PWSA’s stormwater operations fully comply with 52 Pa. Code § 65.2. PWSA notes that, in determining whether an occurrence of an unusual nature causing more than $50,000 in damages is a reportable accident related to stormwater, PWSA will only consider damage related to stormwater that has entered its system or that is otherwise directly related to the system.

Parties should discuss the stipulation of reporting accidents for “damage related to stormwater that has entered its system or that is otherwise directly related to the system” identified by PWSA.

**52 Pa. Code § 65.4 – Records**

The Stormwater CP at Page 19 indicates that PWSA’s current operations and practices, including those applicable to stormwater operations, are fully in compliance with 52 Pa. Code § 65.4. PWSA also references maps of PWSA’s storm sewer system and current green infrastructure projects attached to the Stormwater CP as Appendices E and F. However, the Stormwater CP at Page 3 indicates PWSA does not currently have a formal written plan for an inventory of stormwater assets and conditions, and Appendices E and F do not appear to indicate the character and size of stormwater infrastructure and may not include the location of other relevant stormwater facilities (i.e., stormwater points of connection, basins, inlets, outfalls, etc.).

 The terms “character” and “size” in 52 Pa. Code § 65.4 may include several criteria such as material types, pipe/outfall/inlet diameter, catch basin dimensions and capacities, GI project land area, storage tank capacities, asset conditions, and functional capabilities (e.g., PennDOT Type C Inlets, etc.). Certain inventory data may help PWSA and the Commission to determine costs, functional capabilities, and asset service lives.

Parties should discuss a timeframe by which PWSA should be required to complete and be able to furnish to the Commission a complete inventory of stormwater assets and the types of information that PWSA should include in its inventory.

**52 Pa. Code §§ 65.8 – Meters & 65.14 - Measurement**

The Stormwater CP at Page 14 identifies the use of ArcGIS mapping software to calculate the impervious area for all parcels within PWSA's service territory. In this capacity, the GIS software acts as the meter for a stormwater utility. Regarding 52 Pa. Code §§ 65.8 and 65.14, parties should discuss:

1. PWSA’s proposed method of measurement to calculate applicable stormwater rates (i.e., impervious surface area) as compared to other potential methods, which may include gross area, land use, or some combination of methods.
2. The attributes of the GIS software and the map scale, including the detectable size and raster resolution, of the aerial base maps used to produce the impervious area polygons and identify an acceptable allowable error standard for the results.
3. The allowable error that, if exceeded, would result in an adjustment to the billing determinant (i.e., the impervious surface area value) of the affected customer.
4. Regarding Page 9 of PWSA Statement No. 8 at Docket No. R-2021-3024779, where Mr. Readling averred that Michael Baker International and PWSA completed quality assurance/quality checks (“QA/QC”) on the hand drawn impervious area closed polygons:
5. The process steps of the QA/QC procedures utilized to correct topological errors induced during the digitizing efforts by the operator, such as polygon knots and loops and other errors and the standard to which these QA/QC efforts were conducted.
6. The requirements, if any, for an on-going QA/QC process of analyzing a different set of customer impervious/parcel data to a statistically significant standard on a periodic basis or upon request by a customer (i.e., similar to how a water utility customer may request that their water meter be tested for accuracy).
7. The method PWSA will use to quantify and retain the results of QA/QC efforts periodically to create a definable record of improving the GIS impervious areas calculations and reducing the likely percentage of errors.
8. Regarding Page 35 of PWSA Statement No. 7 at Docket No. R-2021-3024779, where Mr. Igwe indicated that PWSA intends to review and reassess impervious area approximately every five (5) years:
9. The ability of PWSA to capture all changes to impervious area associated with customer parcels in the GIS software based upon access to the City’s building permit data set.
10. The appropriate time interval in which the aerial base map, used to calculate impervious areas, should be updated with new and/or higher resolution maps for the stormwater service territory.

**52 Pa. Code § 65.16 - System of Accounts**

The Stormwater CP at Page 20indicates that PWSA intends to comply with 52 Pa. Code § 65.16 in the same manner as it is complying for water/wastewater and that its accounting practices will not differ. However, PWSA also notes that the NARUC system of accounts does not include a system specific to stormwater accounts. Also, the Stormwater CP notes that PWSA intends to present a proposed allocation of all elements of cost and service among its water, wastewater, and stormwater operations.

The Stormwater CP does not appear to address with specificity how PWSA intends to record stormwater transactions where categories of transactions are unique to stormwater service. For example, stormwater utilities frequently invest in and operate green infrastructure projects, which may include a variety of different types of components, such as rain gardens, permeable pavement, green roofs, etc. Recording stormwater transactions in a consistent and accurate manner may assist with ensuring that PWSA’s rates are just and reasonable. Parties should discuss:

1. The manner and form of PWSA’s system of accounting for stormwater transactions, and actions the Commission may take with respect to any further recommendations under Chapter 17 of the Public Utility Code.
2. Depreciation, amortization and retirement practices, including, but not limited to:
3. Depreciation rates used for green infrastructure assets;
4. Amortization rates used for planning and studies (i.e., flow studies, long term control plans, etc.); and
5. Retirement practices where combined sewer system (CSS) assets are abandoned or transferred to PWSA stormwater utility accounts.
6. PWSA’s accounting practices for situations where CSS assets are subsequently used solely for stormwater purposes. For example, if 50% of the book value of a CSS wastewater main is considered wastewater utility plant in service with the remaining 50% of the book value being considered stormwater utility plant in service, and the CSS wastewater main is then converted to a stormwater main after the installation of a separate sanitary sewer system, parties should discuss how this may impact the stormwater utility. Likewise, parties should address allocated expenses associated with the infrastructure and for situations where stormwater mains discharge stormwater into a CSS.
7. New or subaccounts for recording various entries including, but not limited to:
8. Different categories of green infrastructure assets, further broken down by major plant components. For example, categories of green infrastructure assets may include rain gardens, permeable pavement, bioswales, etc. whereas major plant components may include inlets, pipes, paving, vegetation, and other capitalizable costs.
9. Subaccounts for transactions where investments or costs are allocated as opposed to those assigned entirely to stormwater. For example, whether PWSA should maintain subaccounts for CSS assets to separate the book value of CSS assets allocated to PWSA’s stormwater utility function from the book value allocated to PWSA’s wastewater utility function, and likewise for PWSA-owned laterals, studies, operating expenses, etc.

**52 Pa. Code § 65.17 - Standards of Design**

The Stormwater CP references potential standards of design for stormwater management in several sections, including: at Page 4, when describing a detailed agreement between PWSA and the City to negotiate and resolve any issues outside of MS4 requirements; at Page 13, while describing proposed stormwater credits; and throughout Attachments A and B. Parties should discuss:

1. The level of runoff capture PWSA will adopt as a design standard.
2. The proposed standards of design with regard to a specific level of service, the goals set forth by PWSA’s Green First Plan, and the requirements of the January 26, 2021 Administrative Order on Consent with the EPA (January 2021 AOC).
3. Whether PWSA should maintain exclusive control over standards of design for PWSA-owned utility facilities, notwithstanding any agreement with the City.

**52 Pa. Code § 65.19 Filing of Annual Financial Reports**

The Stormwater CP at Pages 19-20 indicates PWSA intends to comply with the requirement to file annual financial reports for stormwater services, and that PWSA will use allocations from its rate case filed at Docket No. R-2021-3024779 when filing its first annual report by April 30, 2023.

The information included in annual financial reports differs between municipal wastewater utilities and Class A, B, and C wastewater utilities. Parties should discuss:

1. When filing annual financial reports for stormwater service, whether PWSA should use the approved annual report form for Class A wastewater utilities, the approved annual report form for municipal wastewater utilities, or some other annual report form.
2. Whether PWSA should use an existing approved annual report form, or the changes, if any, that should be made to the form to report stormwater financial and operational data.
3. How certain categories of entries should be recorded where a similar type of expense or investment is not made by wastewater utilities.

**52 Pa. Code § 65.21 - Duty of Public Utility to Make Line Extensions**

The Stormwater CP and PWSA Statement No. 7, Exhibit TI-4 (Tariff Storm Water – Pa. P.U.C. No. 1) at Docket No. R-2021-3024779 do not address line extensions for bona fide service applicants under 52 Pa. Code § 65.21. Conversely, Statement No. 6, Exhibit JAQ-6 (Tariff Wastewater – Pa. P.U.C. No. 1), Section G at Docket No. R-2021-3024774 specifies the conditions for main extensions for Bona Fide and Non-Bona Fide Service Applicant(s) to PWSA’s wastewater system. Parties should discuss:

1. The terms and conditions for both Bona Fide and Non-Bona Fide Service Applicants who desire to connect to PWSA’s stormwater system and the differences in requirements for new sanitary sewer, storm sewer and combined sewer connections to an existing combined sewer and for new storm sewer connections to an existing MS4.
2. Whether it is necessary or proper for the accommodation, convenience, and safety of PWSA patrons and the public for PWSA to assume ownership and operation of stormwater utility facilities installed in its service area to serve the public (i.e., excluding facilities that serve individual lots or a defined, limited and privileged group of lots) as new facilities are constructed or as existing facilities are replaced, provided that such facilities meet PWSA’s standards of design and construction and the existing owner/operator is willing and able to dedicate the facilities to PWSA.

**52 Pa. Code § 65.22 - Customer Advance Financing, Refunds and Facilities on Private Property**

The Stormwater CP at Page 13 identifies PWSA’s proposal to allow customers to earn credits to reduce their stormwater rates. Under that proposal, for non-residential customers, credits will be provided for customers that capture and detain runoff on-site, where such infrastructure meets or exceeds the development standards in place. Section B.3 on Page 10 of the *pro forma* Stormwater tariff filed at Docket No. R-2021-3024779 indicates that non-residential customers who undertake regional efforts may also be eligible for credit. Parties should discuss:

1. PWSA’s proposed tier and percentage discounts with respect to potential revenue loss and the equity of discounts available to each customer class when compared to the cost of service for that customer class.
2. The definition of “regional efforts,” whether the definition includes monetary contributions to PWSA to fund facilities that collect, convey, treat and/or dispose of stormwater for the public, the level of contribution required to obtain a stormwater credit, and the handling of those contributions.

**52 Pa. Code § 69.87 - Tariff Provisions That Limit the Liability of Utilities for Injury or Damage as a Result of Negligence or Intentional Torts**

Parties should discuss the limitation of liability section of PWSA’s proposed Stormwater tariff, including:

1. The company-specific dollar amount for the proposed limitation that will become effective at the time PWSA’s proposed tariff is approved.
2. The company specific dollar amount and how that amount was calculated, including the potential applicability to intentional torts, and incidents involving the actions of third parties where the physical and cyber protection of PWSA’s facilities and systems may be at issue.

**52 Pa. Code § 73.3 - Annual Depreciation Reports**

The Stormwater CP at Pages 21-22 indicates that PWSA will submit depreciation reports in compliance with its Stage 1 CP commitments that will include any plant-in-service associated with stormwater.

Parties should discuss how PWSA should determine the appropriate book reserve, net original cost, average service life, survivor curve, remaining life, and annual depreciation rate of unique assets associated with stormwater infrastructure (i.e., green infrastructure assets including trees and shrubs and gray infrastructure assets like inlets, diversion structures, stormwater mains, dissipators, etc.).

**52 Pa. Code § 73.5 - Service Life Study Report**

The Stormwater CP at Page 23 indicates that PWSA intends to comply with 52 Pa. Code § 73.5 with respect to its stormwater operations in the same manner as it is complying for water/wastewater and that its accounting practices will not differ. Parties should discuss the requirements of Section 73.5.

**52 Pa. Code § 73.6 Format for Filing Service Life Study Report**

The Stormwater CP at Page 24 notes that PWSA plans to comply with the standards and requirements listed in 52 Pa. Code § 73.6 for its stormwater investments and operations. Parties should discuss the requirements of Section 73.6.

**52 Pa. Code § 73.7 - Capital Investment Plan Report**

The Stormwater CP at Page 25 states that PWSA’s 2025 report will show capital improvements on a water/wastewater/stormwater basis. Parties should discuss the requirements of 52 Pa. Code § 73.7.

Parties should also discuss whether PWSA should be required to file a CIP Report every five years under Section 73.7(a).

**52 Pa. Code § 73.8 Format for Filing the Capital Investment Plan Report**

The Stormwater CP at Page 25 states that PWSA’s 2025 report will show capital improvements on a water/wastewater/stormwater basis.

Parties should discuss whether information should be provided separately for each type of utility service (i.e., water, wastewater, and stormwater) or whether PWSA should provide CIP reports on a consolidated basis.

**52 Pa. Code § 101 - Public Utility Preparedness through Self-Certification**

The Stormwater CP at Page 26 indicates that PWSA’s existing cyber security and emergency response plans are applicable to all aspects of PWSA’s operations, including its present stormwater operations. However, the Stormwater CP does not explicitly state that PWSA’s existing physical security, cyber security, business continuity, and emergency response plans for stormwater operations comply with 52 Pa. Code § 101.

Parties should discuss whether PWSA physical security, cyber security, business continuity, and emergency response plans for stormwater operations should comply with Section 101.

**Applicability of Stage 1 Compliance Issues**

Consistent with the Commission’s Final Implementation Order regarding Chapter 32 of the Public Utility Code, PWSA addressed several relevant issues in its Stage 1 CP in addition to the areas covered by Commission regulations, including PWSA’s relationship with the City of Pittsburgh and bulk agreements. These two items are further discussed below.

**PWSA’s Relationship with the City of Pittsburgh**

The Stormwater CP at Page 3 describes that PWSA and the City are co-permittees for PWSA’s MS4, are required to update and submit information to the Pennsylvania Department of Environmental Protection annually in their Annual MS4 Status Report, and have developed a Pollution Reduction Plan for the MS4. Further, the Stormwater CP indicates that a MOU between PWSA and the City regarding the maintenance of stormwater infrastructure is being developed. Also, the Stormwater CP states that PWSA and the City are developing an agreement to negotiate and resolve any issues outside of MS4 requirements and to address certain PWSA stormwater management responsibilities, including required coordination and cost-sharing with the City.

On Page 20 of PWSA Statement No. 7 at Docket No. R-2021-3024779, PWSA witness Tony Igwe discusses that PWSA and the City are subject to the January 2021 AOC. Mr. Igwe discusses that the City and PWSA have committed to a timeline for implementing a full stormwater inspection and enforcement program that consists of: (1) submitting an updated stormwater code for approval to the Pittsburgh City Council by July 2021; (2) hiring additional inspectors and enforcement staff “for 2022;” (3) putting “management partnership procedures” in place by the end of January 2022; and achieving full compliance with “the requirements” by March 31, 2022.

Also, on Pages 21-22 of PWSA Statement No. 7, Mr. Igwe indicates that PWSA has taken responsibility for maintaining approximately 25,000 stormwater catch basins and inlets. Mr. Igwe also avers that, currently, PWSA acts as an agent of the City to perform maintenance of all publicly owned catch basins. Regarding the MOU and the agreement addressing other stormwater management responsibilities, parties should discuss:

1. Whether the MOU and any other agreement containing commitments by PWSA affecting stormwater service are subject to the Commission’s review and approval process in accordance with Sections 507 and 508 of the Public Utility Code, 66 Pa.C.S. §§ 507 and 508.
2. Whether the Commission should require PWSA to file executed copies of any agreements with the City that are necessary for PWSA to fulfill its obligations pursuant to the January 2021 AOC and, if so, the date by which these agreements should be filed with the Commission so that the Commission and interested parties may complete a meaningful review of applicable agreements and, to the extent permissible and necessary, direct any revisions to such agreements prior to PWSA’s deadlines under the January 2021 AOC.
3. How the potential increase in PWSA’s responsibilities for the City’s MS4 may impact its revenue requirements and how those costs should be tracked during the timeframe preceding PWSA’s next rate case filing.
4. Whether PWSA should continue to operate stormwater infrastructure that it does not own without a written service agreement or lease.
5. Whether PWSA should provide repairs or capital improvements for infrastructure that it operates on behalf of the owner or the owner of such infrastructure should be responsible for the cost of repairs or improvements.
6. If PWSA activities regarding maintenance of stormwater catch basins and inlets are covered by an existing service agreement or lease.
7. If PWSA, as an agent of the City, maintains exclusive control over the services and improvements required to provide service
8. Whether PWSA may recover through tariff rates costs for services and improvements where PWSA does not have exclusive control over determining what services and improvements are necessary. For example, if the City designates to PWSA what services and improvements are required for catch basins, whether PWSA should recover costs to fulfill City-imposed requirements through tariff rates or should such costs be recovered exclusively from the City. Also, consider where PWSA may control some, but not all, of the services and improvements required.

**Bulk Stormwater Agreements**

The Stormwater CP does not appear to address arrangements relating to stormwater service provided by PWSA for entities located outside of the City’s municipal limits. For example, the Stormwater CP’s Attachment E identifies private storm sewers located in portions of Mount Oliver Borough and PWSA and private storm sewers located either entirely outside of, partially outside of, or along the City’s municipal limits, including, but not limited to, PWSA storm sewers proximate to PWSA’s Lampher Reservoir in Shaler Township.

When reviewing issues surrounding PWSA bulk stormwater agreements, parties should discuss:

1. Whether PWSA is required to file with the Commission copies of its current contracts and/or agreements for stormwater services with other utilities, municipalities, or public authorities, pursuant to 66 Pa.C.S. §§ 505 and 507.
2. The terms of any existing bulk stormwater agreements or arrangements have the financial effect with regard to PWSA’s provision of stormwater services.
3. The cost structure and standards by which future bulk stormwater agreements will be examined to determine an appropriate incremental system contribution.
4. Whether PWSA is financially responsible to third parties for costs borne by the third parties for managing stormwater that does not enter a facility operated by PWSA, which may include costs to collect and convey stormwater using roadways.
5. Whether PWSA may be financially responsible for costs paid by a third party for managing stormwater that was conveyed to the third party by PWSA.
6. How the costs of conveying stormwater generated from developed properties outside PWSA’s service territory, but within PWSA’s sewershed areas, by contributing municipalities should be managed and whether those costs should be recovered by PWSA from the entities causing such costs.

**66 Pa.C.S. §§ 510 - Assessment for regulatory expenses upon public utilities & 3207 – Commission assessment**

Section 3207(b) of the Public Utility Code, 66 Pa.C.S. § 3207(b), indicates that the Commission shall make an estimate based on the gross intrastate revenues in accordance with the procedures set forth in Section 510(b)(1) of the Public Utility Code, 66 Pa.C.S. § 510(b)(1), and shall impose an assessment on an authority based on the authority’s proportional share of the Commission’s expenses “relating to the Commission’s utility group in accordance with section 510(b).” Section 510(b) generally requires the Commission to allocate expenses directly attributable to the regulation of each group of utilities furnishing the same kind of service and to debit the amount determined to such group. However, Section 510(b)(1) permits the Commission to deem utilities rendering water, wastewater or water, and wastewater service as a utility group.

Parties should discuss whether, for assessment purposes, PWSA stormwater service should be treated as a distinct utility group or whether the Commission, by waiver or otherwise, should deem stormwater service as part of the water and wastewater utility group. For example, if stormwater is treated as a distinct utility group, PWSA may be responsible for payment of all direct and indirect expenditures attributable to the regulation of stormwater service. However, if stormwater is treated as part of the water/wastewater utility group, the entire water/wastewater utility group may be responsible for payment of all direct expenditures attributable to the regulation of stormwater service. Either scenario may impact PWSA water, wastewater and/or stormwater rates and may increase or decrease assessments upon the remainder of the water/wastewater utility group.

**66 Pa.C.S. § 1311 – Valuation of and return on the property of a public utility**

Section 1311(c) of the Public Utility Code, 66 Pa.C.S. § 1311(c), provides that the Commission, when setting base rates, after notice and an opportunity to be heard, may allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base if in the public interest.

Parties should discuss whether PWSA may combine its stormwater revenue requirement with its water or wastewater revenue requirements, or both, and whether combining applicable revenue requirements is in the public interest. Discussions should focus on the portion of PWSA’s stormwater revenue requirement that is associated with costs to collect, convey, treat, and dispose of stormwater that is not also considered to be wastewater under the Public Utility Code.

**Stormwater Credit Program**

On Pages 33 and 34 of PWSA Statement No. 7 at Docket No. R-2021-3024779, PWSA witness Mr. Igwe discusses the types of credits that may be approved for both residential and non-residential customers where a percentage discount may be applied to the customer’s tariff rate. On Exhibit HJS-2SW, the total cost of the Stormwater Credit Program is added to determine the revenue requirement regardless of the proportionality of cost attributed to each customer class.

Parties should discuss whether the costs of proposed stormwater credits should be borne exclusively by the customer class receiving, or eligible to receive, those credits.

1. Regarding the percentage increase of 3,118.3%, PWSA-SW provided a proof of revenue in supplemental information filed with the Commission indicating that, for the fully projected future test year, stormwater “system revenues” at existing rates and at proposed rates effective January 12, 2022 are $570,821 and $18,370,760, respectively. [↑](#footnote-ref-2)
2. Chairman Dutrieuille’s Statement was issued concurrent with the Order approving the Joint Petition for Settlement for PWSA’s water and wastewater rate cases. *See* *Pennsylvania Public Utility Commission et al. v. Pittsburgh Water and Sewer Authority*, Docket Nos. R-2020-3017951 and R-2020-3017970 (Order entered December 3, 2020). [↑](#footnote-ref-3)
3. *See* 52 Pa. Code § 1.96 (Unofficial statements and opinions by Commission personnel). [↑](#footnote-ref-4)
4. *See Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1*, Docket Nos. M-2018-6420802 and M-2018-2640803 (Order entered February 4, 2021). [↑](#footnote-ref-5)
5. Chairman Dutrieuille’s Statement was issued concurrent with the Order approving the Joint Petition for Settlement for PWSA’s water and wastewater rate cases. *See* *Pennsylvania Public Utility Commission et al. v. Pittsburgh Water and Sewer Authority*, Docket Nos. R-2020-3017951 and R-2020-3017970 (Order entered December 3, 2020) [↑](#footnote-ref-6)
6. The Stormwater CP at Page 4 does not specify whether the MOU and the reference to an agreement addressing other stormwater management responsibilities are the same agreement or whether these are two separate agreements. [↑](#footnote-ref-7)