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September 8, 2021

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Filing Room  
Harrisburg, PA 17120

Re: Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh  
Water and Sewer Authority – Stage 2; Docket Nos. M-2018-2640802, *et al.*;  
**CITY OF PITTSBURGH PETITION TO INTERVENE**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is The City of Pittsburgh's Petition to Intervene to in the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

*/s/ Whitney E. Snyder*

Thomas J. Sniscak  
Kevin J. McKeon  
Whitney E. Snyder  
*Counsel for The City of Pittsburgh*

WES/das  
Enclosures

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Per Certificate of Service

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Chapter 32 of the Public	:	Docket Nos.	M-2018-2640802
Utility Code Regarding Pittsburgh Water	:		M-2018-2640803
and Sewer Authority – Stage 2	:		

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**THE CITY OF PITTSBURGH’S  
PETITION TO INTERVENE**

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NOW COMES The City of Pittsburgh (“The City”), by and through its attorneys, Hawke McKeon & Sniscak LLP, and files this Petition to Intervene in the above-captioned proceeding before the Pennsylvania Public Utility Commission (“Commission”). In support of its Petition, City avers as follows:

1. On April 9, 2021, Pittsburgh Water and Sewer Authority (“PWSA”), pursuant to the procedural process set forth by the Pennsylvania Public Utility Commission (“Commission”) in its Opinion and Order on Stage 1 of PWSA’s Compliance Plan (“Stage 1 Final Order”),<sup>1</sup> filed its Stage 2 Compliance Plan: Chapters 14 & 56, the Discontinuance of Service to Leased Premises Act, and Collections (“Stage 2 Compliance Plan”).<sup>2</sup> PWSA’s Stage 2 Compliance Plan seeks to address, *inter alia*, customer service issues and compliance with Chapter 14 of the Public Utility Code, 66 Pa. C.S. §§ 1401, *et seq.*, and Chapter 56 of the Commission’s Regulations, 52 Pa. Code §§ 56.1, *et seq.*

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<sup>1</sup> See Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1, Docket Nos. M-2018-2640802, *et al.*, Opinion and Order at 64-65 (Pa. PUC Feb. 4, 2021).

<sup>2</sup> Act 65 of 2017 created Chapter 32 of the Public Utility Code and provided for Commission oversight of PWSA as if it were a public utility. Act of Dec. 21, 2017, 2017 Pa. Laws 1208 (Act 65 of 2017). To implement Act 65 of 2017, the Commission established a two-stage review of PWSA’s Compliance Plan, 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 billing and collection issues.

2. On May 20, 2021, the Commission issued an Order that amended the timeline for the assignment of the Stage 2 Compliance Plan to the Office of Administrative Law Judge (“OALJ”), allowing time for additional informal workshops amongst the parties.

3. On August 5, 2021, the Commission issued a Secretarial Letter assigning the Stage 2 Compliance Plan proceeding to the OALJ to conduct evidentiary hearings and develop an evidentiary record. This matter was further assigned to Administrative Law Judges Eranda Vero (“ALJ Vero”) and Gail M. Chiodo (“ALJ Chiodo”).

4. The City, a Home Rule Municipality organized and existing under the Home Rule Charter and Optional Plans Law, 53 Pa.C.S. § 2901, et seq., and city of the second class by statutory designation, is a political subdivision of the Commonwealth of Pennsylvania and maintains its principal place of business at 414 Grant Street, 5th Floor City-County Building, Pittsburgh, PA 15219.

5. All correspondence and pleadings in this docket should be directed to the City's counsel in this matter:

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### **PETITION TO INTERVENE**

6. Eligibility to intervene in Commission proceedings is governed by the Commission's regulations found at 52 Pa. Code § 5.72. The Commission's regulations provide that in order to have the ability to intervene, a party must have “a right or interest” sufficient to warrant intervention, which includes an interest that may be directly affected by the proceeding and which is not being adequately represented by existing participants, and where the petitioner may be bound by the actions of the Commission or where the right or interest is otherwise in the public interest. *Id.*

7. The City established PWSA and currently owns PWSA’s water and wastewater infrastructure. The City established PWSA in 1984 to assume responsibility for operating the City’s water supply and distribution and wastewater collection systems (the “Water and Sewer System”). Moreover, the City is a PWSA ratepayer.

8. PWSA operates and maintains the City’s Water and Sewer System, which provides these services to a majority of the residential, business, educational facilities, and other types of structures within the City’s corporate limits. Within the City, there are 80,569 water and sewer accounts and 30,728 sewer-only accounts. Millvale, a municipal customer of PWSA services, has 1,678 water-only accounts.

9. Pursuant to a lease and management agreement dated March 29, 1984 (the “1984 Agreement”) between PWSA and the City, the City leased its Water and Sewer System to PWSA, with the City continuing to provide services necessary to operate the system, acting as an agent of PWSA. In 1995, the parties terminated the 1984 Lease Agreement and entered into a 1995 Capital Lease Agreement dated July 15, 1995, which remains in effect today.

10. PWSA and the City also entered into a cooperation agreement with an effective date of January 1, 1995 (the “1995 Cooperation Agreement”) and later amended (the “First Amendment”) on March 21, 2011. The 1995 Cooperation Agreement, as amended, remained in effect until October 3, 2019, when the PWSA terminated it because the parties negotiated a new cooperation agreement, the 2019 Cooperation Agreement. The 2019 Cooperation Agreement is effective October 3, 2019.

11. The terms of the 2019 Cooperation Agreement are significant because it recognizes transitions in the relationship between two discrete governmental entities, allowing each party the opportunity to implement these significant changes in a reasonable period of time to benefit the taxpayers and ratepayers, respectively, many of whom are the same residents of the City.

a. It confirms the City’s commitment to change a thirty-six (36) year relationship over the course of five (5) years, which coincides with the time remaining on the 1995 Capital Lease Agreement, which expires on September 1, 2025. Following the expiration of the 1995 Capital Lease Agreement, the PWSA may then exercise the option to purchase the Water and Sewer System from the City for one dollar (\$1.00).

b. It recognizes the PWSA, an independent municipal authority, is transitioning from a municipal authority that is not subject to the PUC’s authority and oversight to a municipal authority that is subject to the PUC’s authority and oversight. It is assuming an identity that is more akin to a traditional public utility rather than an independent authority.

c. It identifies the City, the current owner of the water and sewer system, is transitioning from a Water and Sewer System owner—allowing it an agreed upon access

to its own water and sewer system—to a customer, paying for its access to water and sewer services.

12. The City negotiated the 2019 Cooperation Agreement, in part, to balance the significant change, understanding each party must take specific positions: one to protect its customers and the other to protect its residents.

13. The 2019 Cooperation Agreement has the force and effect of law. Act of July 23, 2020, P.L. 677, No. 70.

14. Therefore, the City is eligible to intervene as of right and because its interest in these proceedings are of such a nature that its intervention is necessary and appropriate to the administration of the statute under which the proceeding is brought.” 52 Pa. Code § 5.72(a).

15. Further, the City has identified an interest that will be directly affected by these proceedings, and there is no other party but the City that can adequately represent its interests because the Commission intends to bind the City with any decision that it enters in these proceedings. 52 Pa. Code. § 5.72(a)(2).

16. Pursuant to the City’s current position and until such point in time where the PWSA assumes full ownership of the Water and Sewer System, they each receive a certain grant of general immunity to claims and lawsuits. See the Political Subdivision Tort Claims Act, 42 Pa. C.S. § 8541 et seq.

17. However, this general grant of immunity is subject to limited exceptions that include claims and suits arising from alleged dangerous conditions of the facilities of sewer and water owned by the local agency and located within rights-of-way. See 42 Pa. C.S. § 8542(b)(5).

18. The City believes its exposure to liability and damages is germane to the overall discussions because statutory and decisional law states that neither the City nor the PWSA can

expand or restrict the legislative grant of immunity or the exceptions to the general grant of immunity in a manner that is inconsistent with the Tort Claims Act.

19. As municipal entities, the law limits the ability of the City and the PWSA to shift exposure (liability and damages) in the same manner as a private entity, and neither statutory law nor decisional law empower the PUC to alter or amend the Tort Claims Act. 25. Therefore, the City's continuing ownership exposes it to ongoing claims even though the PWSA now operates and maintains the Water and Sewer System pursuant to the edicts announced by the PUC.

20. Finally, the City is entitled as a matter of law to intervene because it will suffer immediate and irreparable harm if the PUC denies this petition to intervene.

21. For the reasons stated above, The City's intervention in this matter meets the intervention standards of 52 Pa. Code § 5.72, and is otherwise in the public interest. Accordingly, The City requests that this intervention be granted and that it be allowed full party status in this matter.

WHEREFORE, The City of Pittsburgh respectfully requests that this petition be granted and that the Pennsylvania Public Utility Commission grant it party status in the above-captioned matter.

Respectfully submitted,

/s/ Whitney E. Snyder

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/s/ Yvonne S. Hilton

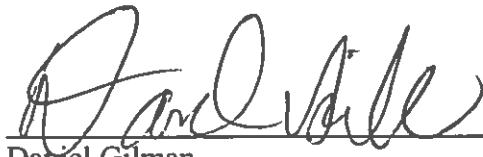
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DATED: September 8, 2021



## VERIFICATION

I, Daniel Gilman, Chief of Staff for Mayor William Peduto, on behalf of City of Pittsburgh, hereby state that the facts set forth in the foregoing statement and its attachments 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 in this matter. This verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



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Daniel Gilman  
Chief of Staff for Mayor William Peduto

Dated: September 8, 2021

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the forgoing document upon the persons listed below in accordance with the requirements of § 1.54 (relating to service by a party).

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/s/ Whitney E. Snyder

Thomas J. Sniscak  
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DATED: September 8, 2021