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July 18, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Natalie Leon, Jaime Wagner, Louise Sell, Christopher Cratsley, and James Rauber v.
Pittsburgh Water and Sewer Authority – Docket No. C-2018-3000961

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Pittsburgh Water and Sewer Authority's Motion for an Interim Scheduling Order with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Carl R. Shultz

CRS/jls
Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing **Motion** upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via First Class Mail

Natalie Leon
2805 Homehurst Ave.
Pittsburgh, PA 15234

Jaime Wagner
2901 Homehurst Ave.
Pittsburgh, PA 15234

Louise Sell
2913 Homehurst Ave.
Pittsburgh, PA 15234

Christopher Cratsley
2915 Homehurst Ave.
Pittsburgh, PA 15234

James Rauber
1801 Byrnwick Drive
Pittsburgh, PA 15243

Honorable Mark A. Hoyer
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Piatt Place
301 5th Avenue, Suite 220
Pittsburgh, PA 15222

Date: July 18, 2018



Carl R. Shultz, Esquire
Attorneys for
The Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Natalie Leon, Jaime Wagner, Louise Sell,	:	
Christopher Cratsley, and James Rauber,	:	Docket No. C-2018-3000961
Complainants	:	
	:	
v.	:	
	:	
Pittsburgh Water and Sewer Authority,	:	
Respondent	:	

**THE PITTSBURGH WATER AND SEWER AUTHORITY’S
MOTION FOR AN INTERIM SCHEDULING ORDER**

To Administrative Law Judge Mark A. Hoyer:

Pursuant to 52 Pa. Code § 5.103, The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority” or Respondent”) submits this Motion for an Interim Scheduling Order (“Motion”) so as (a) to permit the Presiding Administrative Law Judge (“ALJ”) to decide the issues raised by PWSA’s Preliminary Objections to the Complainant’s Second Amended Complaint and (b) to preclude the filing of an yet another amended complaint by the Complainants until after such decisions are made.¹ In support of this Motion, PWSA avers as follows:

INTRODUCTION

In response to PWSA’s Preliminary Objections, the Complainants² have filed successive amended pleadings. The Complainants’ use of seemingly endless amended pleadings will (a) preclude any resolution of the deficiencies alleged by PWSA in its Preliminary Objections and (b) indefinitely delay the resolution of the claim(s) raised by the Complainants.

¹ Alternatively, if the Complainants file a Third Amended Complaint before the disposition of this Motion, then PWSA requests the alternative relief discussed in Paragraph 9 of this Motion.

² The Complainants are pro se individuals purporting to represent themselves in this matter.

MOTION

Background

1. The purpose of pleadings in a case is to set forth a “road map” which the rest of the litigation follows. Before the Commission, it is necessary to provide a “clear and concise statement” of the material facts and the relief being sought.³ It is not necessary to plead the evidence by which the facts relied on are to be proved.⁴

2. Preliminary objections may be filed in response to a pleading.⁵ In response, a party may file an amended pleading⁶ or an answer to the preliminary objections.⁷

Interpretation of Section 5.91(b)

3. Section 5.91(b),⁸ which governs amendments in response to preliminary objections, does not set any fixed limit as to the number of amendments of a pleading that may be allowed.

4. However, Section 5.91(b) was not intended to create a circular (and repetitive) process. Rather, that regulation was intended to create a process through which a party may cure deficiencies in their pleading.⁹ Once the pleadings are closed, other regulations permit

³ See 52 Pa.Code § 5.22(a)(5), (6).

⁴ 52 Pa.Code § 5.21, 5.22. See also 4 Standard Pennsylvania Practice 2d § 21:58 (“Evidence has no place in a pleading. It is neither necessary nor desirable that particularities of evidential fact be pleaded, so long as the essential facts to support a claim are stated.”) (footnotes omitted); 4 Standard Pennsylvania Practice 2d § 22:14 (“It is not necessary for the plaintiff to plead the evidence relied upon to establish the claim, nor to anticipate and negate possible defenses.”) (footnotes omitted).

⁵ 52 Pa.Code § 5.101.

⁶ 52 Pa.Code § 5.91(b).

⁷ 52 Pa.Code § 5.101(f).

⁸ 52 Pa.Code § 5.91(b).

⁹ See, e.g., *Application of Justin Joseph Jalbert*, Docket No. A-2017-2606971, Opinion and Order entered April 5, 2018. In that proceeding, the Applicant filed preliminary objections alleging a deficiency in the protests filed by competitors. In response, the protestants “had the opportunity to file an amended protest pursuant to 52 Pa. Code § 5.91(b) in order to correct this alleged deficiency. Instead, [the protestants], which were represented by counsel, responded with a generic denial of the allegation in its Answer and did not provide any further clarification. It was not until after the issuance of the Initial Decision and the filing of its Exceptions that [the protestants]

amendments to pleadings, if necessary, to introduce or respond to newly discovered evidence and/or issues.¹⁰

5. Accordingly, Section 5.91(b) should be construed to limit successive amendments where the pleadings continue to indicate that deficiencies cannot be cured and/or the claim(s) asserted cannot be established. This is consistent with the Commission's regulations which should be "construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable."¹¹

Complainant's Failure to Cure

6. The Complainants' successive amended pleadings show a repeated failure to cure the deficiencies alleged by PWSA's Preliminary Objections. The Complainants have filed two amended pleadings, as a matter of course. Rather than responding to the alleged deficiencies, the Complainants' use of amendments is merely creating a "never-ending" story of constant subtle changes to the alleged support for their allegations.

Relief Requested by PWSA

7. Under the circumstances presented, and to secure the just, speedy and inexpensive determination of this proceeding, PWSA submits that the Presiding ALJ should decide the issues raised by PWSA's Preliminary Objections to the Second Amended Complaint and should

attempted to respond to the allegation with any substantive response and to seek amendment of their protest. Under the circumstances of this case, we find that the ALJ properly granted the preliminary objections for lack of standing pursuant to 52 Pa. Code § 5.101(a)(7)." *Id.* at p. 10 (footnote omitted). However, to ensure the protestants' procedural rights, the Commission permitted the protestants, pursuant to 52 Pa. Code § 5.101(h), to file an amended protest. *Id.* at p. 11.

¹⁰ See 52 Pa.Code § 5.91(a), 5.91(c), 5.92, 5.93.

¹¹ See 52 Pa.Code § 1.2(a).

preclude the filing of the filing of an amended complaint by the Complainants until after such decisions are made.¹²

8. The Complainants will not be prejudiced by the requested relief. PWSA is entitled to a decision on the deficiencies alleged in its Preliminary Objections.¹³ If PWSA's Preliminary Objections are granted, the Complainants will have the right to file an amended pleading.¹⁴ If PWSA's Preliminary Objections are denied, the pleadings will be closed and the proceeding move forward.

Request for Expedited Action and/or Alternative Relief

9. PWSA is proposing that the Presiding ALJ grant the requested waiver in an expedited manner so as to permit a decision on PWSA's Preliminary Objections to the Second Amended Complaint. If, however, the Complainants file a Third Amended Complaint before the disposition of this Motion, then PWSA requests that the Interim Scheduling Order permit the Presiding ALJ to decide the issues raised by PWSA's Preliminary Objections, if any, to the Complainant's Third Amended Complaint and to preclude the filing of an amended complaint by the Complainants until after such decisions are made. Moreover, if the Complainants file an answer to PWSA's Preliminary Objections to the Second Amended Complaint, then PWSA requests that this Motion be denied as moot.

CONCLUSION

WHEREFORE, PWSA respectfully requests that the Presiding ALJ (1) enter an Interim Scheduling Order so as (a) to permit the Presiding ALJ to decide the issues raised by PWSA's

¹² If the Complainants file a Third Amended Complaint before the disposition of this Motion, then PWSA requests the alternative relief discussed in Paragraph 9 of this Motion.

¹³ 52 Pa.Code § 5.101(g).

¹⁴ 52 Pa.Code § 5.91(h).

Preliminary Objections to the Complainant's Second Amended Complaint and (b) to preclude the filing of an amended complaint by the Complainants until after such decisions are made;¹⁵ and (2) grant any other relief in favor of PWSA that is deemed to be in the public interest.

Respectfully Submitted,



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Date: July 18, 2018

Attorneys for
The Pittsburgh Water and Sewer Authority

¹⁵ If the Complainants file a Third Amended Complaint before the disposition of this Motion, then PWSA requests the alternative relief discussed in Paragraph 9 of this Motion.

Verification

I, Debbie M. Lestitian, am the Chief Counsel and Chief of Administration for The Pittsburgh Water and Sewer Authority ("PWSA" or "Authority"), and I hereby state that the facts set forth in the foregoing **Motion** are true and correct to the best of my knowledge, information and belief and that I expect the Authority 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 sworn falsification to authorities).

A handwritten signature in cursive script, appearing to read "Debbie M. Lestitian", is written over a horizontal line.

Debbie M. Lestitian
Chief Corporate Counsel and Chief of Administration
The Pittsburgh Water and Sewer Authority