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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held December 20, 2018 | | | |
| Commissioners Present: |  | | | |
| Gladys M. Brown, Chairman | | | | |
| Andrew G. Place, Vice Chairman | | | | |
| Norman J. Kennard | | | |
| David W. Sweet | | | |
| John F. Coleman, Jr. | | | |
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| Assignment of the Pittsburgh Water and  Sewer Authority Compliance Plan to the Office of Administrative Law Judge | | | M-2018-2640802 (water)  M-2018-2640803 (wastewater) |

**RECONSIDERATION ORDER**

**BY THE COMMISSION:**

On March 15, 2018, the Commission entered its Final Implementation Order (FIO) in the above-referenced dockets to establish the procedure by which the Commission would implement Chapter 32 of the Public Utility Code. The FIO set forth a September 28, 2018 due date for the filing of a Compliance Plan and a Long-Term Infrastructure Improvement Plan (LTIIP) based on the 180-day filing deadline of   
66 Pa. C.S. § 3204. On September 26, 2018, the Commission issued a Secretarial Letter providing the procedures under which the Commission would conduct its review. PWSA timely filed its Compliance Plan and LTIIP on September 28, 2018.

As directed in the September 26, 2018 Secretarial Letter, notice of the filing of PWSA’s Compliance Plan and the procedures outlined therein was published in the Pennsylvania Bulletin on October 13, 2018. Interested persons were afforded with the opportunity to file comments in anticipation of the assignment of the Compliance Plan to Office of Administrative Law Judge (OALJ) and to inform preliminary Commission review of the Compliance Plan.

The September 26, 2018 Secretarial Letter directed that the PWSA Compliance Plan be assigned to the OALJ for the resolution of any factual matters no later than forty-five (45) days after publication of notice in the Pennsylvania Bulletin. On November 28, 2018, the Commission issued a Secretarial Letter by which it assigned the Pittsburgh Water and Sewer Authority (PWSA) Compliance Plan to the OALJ and moved the Compliance Plan from initial technical staff review to an on-the-record contested proceeding whereby PSWA and interested persons may litigate and develop issues for Commission consideration.

The November 28, 2018 Secretarial Letter (Secretarial Letter) established two stages of review for the Compliance Plan. The Commission directed that, in Stage 1, PWSA and its stakeholders prioritize 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. The Commission further directed that the focus of Stage 2 be on billing and collections issues and the development of a stormwater tariff.

On December 11, 2018, Pittsburgh UNITED (UNITED) filed a Petition for Reconsideration and/or Clarification (UNITED Petition) of the November 28, 2018 Secretarial Letter. On December 11, 2018, the Office of Consumer Advocate (OCA) filed a Petition for Reconsideration and/or Clarification (OCA Petition) of the   
November 28, 2018 Secretarial Letter. On December 18, 2018, PWSA filed an Answer (PSWA Answer) to the Petitions of UNITED and the OCA.

**DISCUSSION**

We note that any issues which we do not specifically address herein, have been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741   
(Pa. Cmwlth. 1993); also *see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The standards for granting a petition for reconsideration were set forth in *Duick   
v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 559 (1982) (*Duick*):

A Petition for Reconsideration, under the provisions of

66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsyl­vania Railroad Company case, wherein it was stated that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them ….” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the commission.

*Duick,* 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)). Under *Duick*, petitions for reconsideration are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559. To the extent that the UNITED Petition and the OCA Petition seek clarification of the procedure outlined in the Secretarial Letter, the Commission grants those Petitions and disposes of them herein.

**UNITED Petition**

In its December 11, 2018 Petition for Reconsideration and/or Clarification, UNITED seeks reconsideration and/or clarification to resolve potential ambiguity regarding the resolution of issues not specifically enumerated for consideration in Stage 1 or explicitly reserved for consideration in Stage 2. UNITED Petition at 2.

UNITED requests clarification that issues related to PSWA’s compliance with statutory protections for tenants under Chapter 15, Subchapter B, of the Public Utility Code, known as the Discontinuance of Service to Leased Premises Act (DSLPA), and the Utility Service Tenants Rights Act (USTRA) are included in Stage 1. UNITED Petition at 3. The Commission agrees that issues related to Chapter 15, including Subpart B, are properly included in Stage 1.

UNITED also requests clarification that parties to Stage 1 are permitted to raise additional issues not specifically enumerated in the initial report for Stage 1 or preserved for Stage 2. UNITED Petition at 3. In this regard, UNITED states that it is “operating under the assumption that additional issues which were not expressly identified in the Stage 1 Staff Report may be raised to the extent that they are not addressed in Chapter 14 or 56 or the creation of a stormwater tariff.” UNITED Petition at 9. UNITED is correct; parties may raise additional issues not expressly identified in the initial report to the extent that they are not explicitly preserved for Stage 2.

UNITED further notes its support for the OCA’s request to reconsider the directive to utilize a two-stage review process and to, instead, address PWSA’s Compliance Plan in a single proceeding. UNITED Petition at 8. We address the OCA’s Petition for Reconsideration and/or Clarification below and, as such, we will not repeat this discussion here.

UNITED asserts that issues related to compliance with Chapters 14 and 56 are intimately related to public health and safety and notes that involuntary loss of water and wastewater service is not a mere inconvenience and can have far-ranging impacts. UNITED Petition at 8. The Commission notes that this observation applies equally to individual customers and to a utility’s total service area. For this reason, the Commission determined to focus Stage 1 of review of the PWSA Compliance Plan on issues stemming from years of delayed infrastructure investment, maintenance, and revenue management. Secretarial Letter at 3. The Commission believes that part of the statutory mandate of 66 Pa. C.S. § 3204(b) is to ensure that PWSA’s procedures and processes facilitate immediate attention to those issues that are both important and urgent. Secretarial Letter at 3.

**OCA Petition**

In its December 11, 2018 Petition for Reconsideration and/or Clarification, the OCA seeks reconsideration of the Commission’s directive to utilize a two-stage review process for PWSA’s Compliance Plan. OCA Petition at 3.

The OCA avers that issues involving compliance with termination requirements will not be addressed until at least the end of 2020 when a final order is issued in   
Stage 2. OCA Petition at 3. The Commission disagrees. We note that the OCA Petition does not discuss the workshop process in which stakeholders and Commission staff may address billing issues. Secretarial Letter at 3-4. Similarly, the OCA Petition does not discuss that the Commission has directed the Bureaus of Consumer Services and Technical Utility Services to develop work product from those workshops in the form of an initial report and directed questions for use by stakeholders and the Commission in Stage 2 of the Compliance Plan litigation. The opportunity to work with utility, water, and wastewater professionals to address pressing issues facing PWSA should not be ignored by stakeholders in these proceedings.

As discussed in the Secretarial Letter, conducting staged litigation not only provides priority to large-scale infrastructure issues that are both important and urgent, but ensures that stakeholders will remain free to engage informally with Commission staff on billing and stormwater issues over the next year outside of the formal hearing process. Secretarial Letter at 4. As such, these issues may be resolved concurrent with Stage 1. We also note that there is no evidence of widespread or impermissible service terminations and that the OCA has not presented such evidence in its Petition or otherwise.

The OCA also contends that issues related to uncollectibles will be delayed until Stage 2. OCA Petition at 3. To the contrary, issues related to appropriate revenue management are not reserved for Stage 2. Secretarial Letter at 3. Stage 1 is directed toward urgent infrastructure remediation and improvement, and the revenue and financing requirements of maintaining service that supports the public health and safety. Secretarial Letter at 3.

The OCA further contends that there is “significant overlap and interplay between the issues the Commission has directed to address in two separate stages.” OCA Petition at 3. We note that the OCA provides no supporting facts or examples to support its argument and we are not persuaded by this conclusory statement alone.

The OCA submits that the Commission should allow the parties additional time to investigate the Compliance Plan in one step, rather than two-stages. OCA Petition at 4, 5. The OCA’s argument ignores the purpose the two-stage review. The Commission intends to make progress on Stage 1 issues and, in doing so, the Commission is not delaying progress on Stage 2 issues. As stated in the Secretarial Letter, stakeholders remain free to informally engage with Commission staff on billing and stormwater issues over the next year outside of the formal hearing process, and by doing so, work with utility and water and wastewater professionals to address PWSA’s pressing concerns. Secretarial Letter at 2. As such, investigation of Stage 2 issues will occur concurrently with review of Stage 1 issues.

**PWSA Answer**

In its December 18, 2018 Answer, PWSA points out that proceeding in the fashion requested by UNITED and the OCA would add more complexity to a proceeding that will already be challenging, even with the Commission’s efforts to stage the proceeding in a manageable way. PWSA Answer at 2. In addition, PWSA correctly points out that issues are not held off until the conclusion of Stage 1. PWSA Answer at 2. Rather, workshop participants will actively address billing and stormwater issues concurrent with Stage 1 litigation. Secretarial Letter at 4. As to the proposed billing and stormwater workshops, PWSA not only approves of the workshop format, but also seeks to expand it by removing issues from litigation in favor of expanded workshops, which the Commission declines to do. PWSA Answer at 3.

In response to the OCA claims of conflict between the proposed rate case settlement at Docket No. R-2018-3002645, PWSA opines that it does not agree.[[1]](#footnote-1) PWSA does not agree that there are areas of conflict or inconsistency between the former and the staged review procedure of its Compliance Plan. PWSA Answer at 2, fn. 3. PWSA does not appear to resist actively addressing all settlement compliance issues in the Compliance Plan proceeding as the rate case Parties have proposed. PWSA Answer at 5. Indeed, at most, Stage 2 billing and stormwater tariff review affects the timing of final Commission orders on these issues; it does not limit or restrain PWSA action related to full compliance.

**CONCLUSION**

To the extent that the UNITED Petition and the OCA Petition seek clarification of the procedure outlined in the Secretarial Letter, the Commission grants those Petitions and disposes of them herein. The Commission declines to reconsider its directive that   
two-stage review be utilized for its review of PWSA’s Compliance Plan. The 2-stage review is intended to address and resolve the most critical issues first regarding water service quality, adequacy and reliability and, in the Commission’s judgment, is a sound approach to dealing with the many compliance filing issues in this matter. The Commission believes that the participation of its Bureau of Technical Utility Services, Bureau of Consumer Services, and Law Bureau will offer concrete benefits in the implementation of Chapter 32. The directed work product derived from the billing and stormwater workshops reflect the opinion that Commission staff *and* PWSA stakeholders, working in conjunction, will likely produce optimum results. The implementation of Chapter 32 will require active involvement and effort from all participating stakeholders, including the Commission in its role as a regulator and an adjudicator, and, preferably, the avoidance of excessive litigation. **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration and/or Clarification filed by Pittsburgh UNITED, is granted in hereby part and denied in part consistent with this Order.

2 That the Petition for Reconsideration and/or Clarification filed by the Office of Consumer Advocate, is hereby denied consistent with this Order.

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**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 20, 2018

ORDER ENTERED: December 20, 2018

1. The Commission notes that the proposed Settlement is not yet before it for final disposition and that this Order takes no position on the Settlement or its terms. [↑](#footnote-ref-1)