

**ECKERT  
SEAMANS**  
ATTORNEYS AT LAW

Eckert Seamans Cherin & Mellott, LLC  
213 Market Street  
8<sup>th</sup> Floor  
Harrisburg, PA 17101

TEL 717 237 6000  
FAX 717 237 6019  
www.eckertseamans.com

Karen O. Moury  
717.237.6036  
kmoury@eckertseamans.com

October 25, 2019

**Via Electronic Filing**

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

Re: E.S. Management v. Pittsburgh Water and Sewer Authority  
Docket No. C-2019-3012073 (water)

E.S. Management v. Pittsburgh Water and Sewer Authority  
Docket No. C-2019-3012077 (wastewater)

Dear Secretary Chiavetta:

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

Sincerely,



Karen O. Moury

KOM/lww  
Enclosure

cc: Office of Administrative Law Judge w/enc.  
Certificate of Service w/enc.

**CERTIFICATE OF SERVICE**

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


**Via Email and First Class Mail**

Bradley S. Dornish, Esq.  
Mary Elizabeth Fischman, Esq.  
Dornish Law Offices, P.C.  
2500 Brooktree Rd., Suite 301  
Wexford, PA 15090  
[bdornish@dornish.net](mailto:bdornish@dornish.net)  
[mfischman@dornish.net](mailto:mfischman@dornish.net)

**Via First Class Mail**

Office of Administrative Law Judge  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Dated: October 25, 2019

  
\_\_\_\_\_  
Karen O. Moury, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

E.S. Management,		:	
	Complainant	:	
		:	
v.		:	C-2019-3012073 (water)
		:	
Pittsburgh Water and Sewer Authority		:	
	Respondent	:	
E.S. Management,		:	
	Complainant	:	
		:	
v.		:	C-2019-3012077 (wastewater)
		:	
Pittsburgh Water and Sewer Authority,		:	
	Respondent	:	

**PITTSBURGH WATER AND SEWER AUTHORITY’S MOTION TO CONSOLIDATE**

TO CHIEF ADMINISTRATIVE LAW JUDGE CHARLES E. RAINEY, JR.:

Pursuant to Section 5.81 of the regulations of the Pennsylvania Public Utility Commission (“Commission”), 52 Pa. Code §5.81(a), the Pittsburgh Water and Sewer Authority (“Authority” or “PWSA”) hereby files this Motion to Consolidate the above-captioned matters on the basis that they involve the same issues of facts and law. Specifically, the dispute between E.S. Management (“Complainant”) and PWSA relates to the accuracy of bills rendered by PWSA in 2017 for water consumption, sewer system maintenance (or wastewater conveyance) and Allegheny County Sanitary Authority (“ALCOSAN”) sewage treatment charges. In support thereof, PWSA represents the following:

1. On August 8, 2019, the Commission’s Secretary served Formal Complaints filed by Complainant on PWSA. The Complaint docketed at C-2019-3012073 pertains to charges for water consumption. The Complaint docketed at C-2019-3012077 relates to the wastewater

conveyance and ALCOSAN charges which are billed by PWSA and are based on the amount of water that is consumed. Timely Answers were filed by PWSA on August 28, 2019.

2. The Complaints are identical and were separately docketed by the Commission since both the water and wastewater boxes were checked in Paragraph 3.

3. Section 5.81(a) of the Commission's regulations states that "[t]he Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer [also] may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay." 52 Pa. Code §5.81(a).

4. Among the other considerations are: (a) whether additional issues exist that could cloud the determination of common issues; (b) whether consolidation will reduce litigation costs and decision-making for the parties and the Commission; (c) whether the issues in one proceeding go to the heart of an issue in the other proceeding; (d) whether consolidation will unduly protect a hearing or produce a disorderly or unwieldy record; (e) whether different statutory and legal issues are involved; (f) whether the party with the burden of proof differs in the proceedings; (7) whether consolidation will unduly delay the resolution of one of the proceedings; and (8) whether supporting data in both proceedings will be repetitive. *See Pa. Pub. Util. Comm'n v. City of Lancaster Sewer Fund*, Docket No. R-2012-2310366, at p. 3-4 (Second Prehearing Order Nov. 26, 2012) ("*Lancaster Sewer Fund Prehearing Order*"). As stated in that order, no single consideration, nor group of these considerations, is dispositive of consolidation. Rather, all factors must be evaluated, and a balancing of those favoring and disfavoring consolidation is required. *Id.* at 3.

5. Both Complaints involve the same set of facts, including: (a) the provision of water and wastewater service by PWSA to the property at 3401 Forbes Avenue, Pittsburgh, Pennsylvania (the “subject property”); and (b) the accuracy of charges on disputed bills rendered by PWSA in 2017.

6. Both Complaints involve the same legal issue concerning the responsibility of Complainant to pay for water and wastewater services rendered to the subject property by PWSA and ALCOSAN charges billed by PWSA.

7. In addition to involving not only common, but exactly the same, questions of law and fact, a balancing of the other considerations referenced in the *Lancaster Sewer Fund Prehearing Order* support consolidation of these proceedings. Specifically, consolidation will reduce litigation costs and decision-making for the parties and the Commission; the issues in one proceeding go to the heart of the issues in the other proceeding; consolidation will produce an orderly record that can be used to adjudicate both complaints; the Complainant carries the burden of proof in both proceedings; consolidation will not unduly delay the resolution of either proceeding; and the supporting data in both proceedings will be identical.

8. In summary, consolidating these proceedings for hearing and decision would promote judicial economy and conserve valuable resources of the parties and the Commission. Since the proceedings involve precisely the same issues of fact and law, no reason exists to have them litigated on separate paths.

9. Counsel for Complainant has authorized the undersigned to represent that the Complainant does not oppose this Motion to Consolidate.

WHEREFORE, on the basis of the foregoing, PWSA respectfully requests that the Office of Administrative Law Judge consolidate the Complaints at Docket Nos. C-2019-3012073 (water) and C-2019-3012077 (wastewater).

Respectfully submitted,



---

Karen O. Moury, Esquire  
PA Attorney I.D. No. 36879  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
(717) 237-6036 (phone)  
(717) 237-6019 (fax)  
kmoury@eckertseamans.com

Dated: October 25, 2019

Attorneys for Pittsburgh Water and Sewer Authority