**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, *et al.* : R-2020-3017951

: C-2020-3019348

v. :C-2020-3019305

:

Pittsburgh Water and Sewer Authority - Water :

Pennsylvania Public Utility Commission, *et al.* : R-2020-3017970

: C-2020-3019349

: C-2020-3019302

v. :

:

Pittsburgh Water and Sewer Authority - Wastewater :

Petition of Pittsburgh Water and Sewer Authority : P-2020-3019019

For Waiver of Provisions of Act 11 to Increase :

The DSIC CAP, to Permit Levelization of DSIC :

Charges, and to Authorize the Pay-As-You-Go :

Method of Financing :

**PREHEARING ORDER**

PWSA is a municipal water and wastewater authority serving customers in the City of Pittsburgh and surrounding communities. PWSA provides water service to approximately 80,000 residential, commercial and industrial customers in: portions of the City of Pittsburgh; the Borough of Millvale; and portions of Reserve, O’Hara, and Blawnox Townships, Allegheny County. PWSA also provides wastewater conveyance service to customers located in the City of Pittsburgh, Allegheny County, and also conveys sewage for portions of 24 neighboring communities. PWSA’s water and wastewater operations became subject to regulation by the Pennsylvania Public Utility Commission on April 1, 2018, pursuant to Act 65 of 2017, 66 Pa.C.S. § 3201 et seq.

On March 6, 2020, the Pittsburgh Water and Sewer Authority (PWSA or the Authority) filed Supplement No. 1 to Tariff Water – PA P.U.C. No. 1 and Supplement No. 1 to Tariff Wastewater – PA P.U.C. No. 1 to become effective May 5, 2020. Through this filing, PWSA requests that the Commission approve its new tariffs pursuant to Act 65 of 2017, 66 Pa.C.S. § 3201 et seq. PWSA’s proposed tariffs propose multiyear increases to water and wastewater total annual operating revenues of approximately $43.4 million for 2021 and an additional $12.6 million for 2022. PWSA filed a request for waiver of certain provisions of Act 11 of 2012 to increase the DSIC cap to 10%, permit levelization/annualization of revenue recovery, and permit the Pay-As-You-Go method of financing.

Under the Authority’s proposal, a typical residential water and wastewater conveyance customer using 3,000 gallons per month would see their total monthly bill increase from $72.49 to $86.31, an increase of $13.82 or 19.1% in 2021. For the water portion of the bill, this includes an increase from $49.35 to $58.15, an increase of $8.80 or 17.8%. For the wastewater conveyance portion of the bill, this includes an increase from $23.14 to $28.16, an increase of $5.02 or 21.7%. The rate increase request includes a water and a wastewater DSIC each assessed at 10% of the respective, proposed base rates.

In 2022, the total bill for a customer using 3,000 gallons per month would increase from $86.31 to $91.71, an increase of 6.26%. For the water portion of the bill, this includes an increase from $58.15 to $61.11, an increase of $3.01 or 5.18%. For the wastewater conveyance portion of the bill, this includes an increase from $28.16 to $30.60, an increase of $2.44 or 8.66%. The rate increase request includes a water and a wastewater DSIC each assessed at 10% of the respective, proposed base rates.

Also on March 6, 2020, PWSA filed two motions: a motion to consolidate the water and wastewater cases and to grant a waiver to permit the use of a combined   
water/wastewater revenue requirement; and a motion to consolidate the rate cases with the company’s DSIC petition.[[1]](#footnote-1)

The Commission’s Bureau of Investigation and Enforcement (BIE) filed a Notice of Appearance on March 9, 2020. On March 19, 2020, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance and formal complaints to both the water and wastewater rate cases.[[2]](#footnote-2) The Office of Consumer Advocate (OCA) filed a Notice of Appearance and Formal Complaint on March 24, 2020, at Docket No. R-2020-3017951[[3]](#footnote-3) and at Docket No. R-2020-3017970.[[4]](#footnote-4) Pittsburgh United filed a petition to intervene on March 20, 2020.[[5]](#footnote-5)

On March 31, 2020, BIE filed a Motion for Extension of Statutory Suspension. All of the active parties filed timely responses.

On April 16, 2020, the Commission suspended the filing until December 5, 2020 and assigned the matter to the Office of Administrative Law Judge for the prompt scheduling of such hearings as may be necessary and issuance of a Recommended Decision.

A prehearing conference order was issued on April 17, 2020, scheduling an initial prehearing conference for April 22, 2020. Prehearing Memoranda were filed as directed by the prehearing conference order by PWSA, BIE, OCA, OSBA and Pittsburgh UNITED.

On April 17, 2020, PWSA filed an additional motion requesting that the proceeding seeking approval for a cooperation agreement between PWSA and the City of Pittsburgh be consolidated with the rate cases.[[6]](#footnote-6)

On April 22, 2020, the City of Pittsburgh filed a petition to intervene.

A prehearing conference was held on April 22, 2020, as scheduled. Counsel for each party appeared at the conference. Following a significant discussion with the parties regarding the various motions to consolidate and BIE’s motion to extend the statutory deadline, the parties were directed to continue to confer and attempt to reach a consensus on a litigation schedule. A further prehearing conference was scheduled to take place on May 1, 2020.

By email dated April 30, 2020, the parties reported that they had reached an agreement in principle regarding BIE’s motion and a litigation schedule. The prehearing conference convened on May 1, 2020, and counsel for all parties appeared and participated.

This prehearing order memorializes the matters decided and agreed upon by the parties attending the conferences, as well as agreements made among the parties regarding the litigation schedule following the conferences.

**Litigation Schedule**

The parties agree upon the following litigation schedule:

|  |  |
| --- | --- |
| Date | Event |
| July 7, 8 and 9, 2020 | Public Input Hearings |
| July 21, 2020 | Service of written direct testimony of all other parties |
| August 18, 2020 | Service of written rebuttal testimony |
| September 4, 2020 | Service of written surrebuttal testimony |
| September 11, 2020 | Witness matrix listing the parties intending to cross-examine each witness and the extent of any cross-examination |
| September 14, 17, 18 and 21, 2020 | Technical evidentiary hearings in Harrisburg (beginning at 1:00 p.m. on September 14 and September 21; and 9:00 a.m. on September 17-18.) The hearings will be held in person if safe to do so. In the event that the hearings cannot be held in person, they will be conducted by telephone. |
| September 30, 2020 | Filing and service of main briefs |
| October 13, 2020 | Filing and service of reply briefs or submission of joint settlement petition executed by representatives of parties thereto, together with all parties’ statements in support of joint petition/settlement |

The parties are reminded of the Commission’s requirements for the preparation and filing of written testimony. 52 Pa.Code § 5.412. Written testimony must be accompanied by all exhibits to which it relates. Technical terms and concepts are to be clearly defined and explained in the testimonies and briefs. **The parties are to agree on a list of common acronyms and use them consistently in all written testimony and briefs.**

The above-stated dates are in-hand dates for service on the parties and the presiding Administrative Law Judges (ALJs). The parties at the prehearing conference and the presiding ALJs agreed to accept electronic service of such material,[[7]](#footnote-7) so long as the subject email is received by the date due. **Until further notice, there is no requirement to follow electronic service by sending a hard copy of the same material via first-class mail postage prepaid to the parties designated on the Service List or by express mail service.** The email addresses of the presiding ALJs are as follows: [malong@pa.gov](mailto:malong@pa.gov) and [edevoe@pa.gov](mailto:edevoe@pa.gov).

No written testimony will be admitted into evidence unless accompanied by a verification of affidavit of the witness.

Hearings will begin promptly each day. The parties must confer before commencement of the hearings to schedule their witnesses so as to avoid “holes” or “dead time” during the hearings. In the event that a partial settlement is achieved the parties should be prepared to proceed on the first scheduled day of hearing to present evidence on the non-resolved issues.

**Petitions to Intervene**

The petitions to intervene of Pittsburgh United and the City of Pittsburgh were granted at the April 22, 2020 prehearing conference.

**Petition for Consolidation of Proceedings and Authorization**

**to Use Combined Water and Wastewater Revenue Requirements**

The Petition of PWSA for consolidation of the water, wastewater and DSIC proceedings and to use combined water and wastewater revenue requirements filed on March 6, 2020, are granted. The two base rate proceedings at Docket No. R-2020-3017951 (Water) and Docket No. R-2020-3017970 (Wastewater) are consolidated for hearing and disposition, and PWSA is permitted to use combined water and wastewater revenue requirements. The DSIC Petition of PWSA, Docket P-2020-3019019, is also consolidated for hearing and disposition. The aforementioned Water complaints filed by OCA (Docket C-2020-3019348) and OSBA (Docket C-2020-3019305) are consolidated with Docket No. R-2020-3017951. The aforementioned Wastewater complaints filed by OCA (Docket C-2020-3019349) and OSBA (Docket No. C-2020-3019302) are consolidated with Docket No. R-2020-3017970.

The motion to consolidate the Cooperation Agreement, U-2020-3015258, is denied.[[8]](#footnote-8)

The caption atop this Prehearing Order shall be used by the parties for

this consolidated base rate proceeding.

**Public Input Hearings**

The parties have agreed that there is sufficient public interest to convene public input hearings. Due to the current status of Pennsylvania in regard to the Covid-19 pandemic, these hearing will be conducted by telephone. PWSA has agreed to provide the conferencing platform with which to conduct the hearings. In addition, OCA has agreed to be responsible to coordinate with the parties and obtain a witness list for the proceeding, which list shall be provided to the ALJs and all parties in advance of the scheduled hearings.

Public input hearings shall be held on **July 7, July 8 and July 9, 2020, at 1:00 p.m. and 6:00 p.m. each day.** PWSA is hereby ordered to publish notice of the date, time and registration instructions for the public input hearings in at least one newspaper of general circulation in the PWSA’s service territory, weekly, for two consecutive weeks, beginning with the **Sunday, June 14, 2020**. PWSA is further ordered to file proof of publication with the Commission’s Secretary’s Bureau. PWSA is further ordered to publish notice of the public input hearings on its website, social media and through any other electronic means available.

After consultation with the parties, PWSA shall provide the ALJs with written registration instructions for witnesses who want to testify or observe the public input hearings for publication in the Commission’s hearing notice no later than **June 1, 2020.**  OCA shall provide witness lists for the hearings to the ALJs by noon on **Monday, July 6, 2020.**

## Issues

In their respective prehearing memoranda, the parties identified various issues they may wish to pursue. The reader is directed to these documents to review a recitation of these issues. Additional issues may arise as the discovery process develops.

## Discovery

The parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa.Code § 5.322. If this process fails, the parties have recourse to the Commission’s procedures for formal discovery, as herein modified. 52 Pa.Code §§ 5.321, *et* *seq*. The parties must not send the presiding ALJs discovery material or cover letters, unless attached to a motion to compel. All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel fails to contain such certification, the presiding ALJs will contact the parties and direct them to pursue informal discovery.

PWSA, BIE and OCA proposed modification of the Commission’s procedures for formal discovery. The following modified discovery procedure applies to this case:

1. Answers to interrogatories shall be served in-hand within fifteen (15) calendar days of service of the interrogatories. All parties will make best efforts to provide responses within ten (10) calendar days of service. After service of the direct testimony of the non-Company parties’ testimony, the party’s answers to written interrogatories, served in-hand within ten (10) calendar days of service.

2. Objections to interrogatories shall be communicated orally within three (3) days of service; unresolved objections shall be served to the presiding ALJs in writing within seven (7) days of service of interrogatories.

3. Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within five (5) calendar days of service of written objections.

4. Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within five (5) calendar days of service of such motions.

5. Rulings on such motions shall be issued, if possible, within seven (7) calendar days of filing the motion.

6. Requests for admission are deemed admitted unless answered within ten (10) calendar days or objected to within five (5) calendar days of service.

7. Answers to on-the-record data requests shall be served in-hand within seven (7) calendar days of the request.

8. Any discovery or discovery-related pleadings served after 12:00 p.m. on a Friday or the day before a holiday will be deemed to have been served on the next business day for purposes of tracking due dates.

9. All discovery due dates shall be “in-hand” and electronic or fax service on the due date will satisfy the “in-hand” requirement.

**Settlement and Stipulations**

The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa.Code § 5.231(a). The parties are strongly urged to seriously explore this possibility. Submission of a fully executed joint settlement petition, together with all parties’ statements in support of the joint petition/settlement, must be filed with the Secretary for the Commission and received in-hand by the presiding ALJs no later than the close of business **October 13, 2020**.

If settlement is not feasible, the parties are encouraged to stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234. All stipulations entered into by the parties must be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

**Cross-Examination**

Friendly cross-examination or cumulative cross-examination during hearings will not be permitted. 52 Pa.Code §§ 5.76; 5.243.

**Briefs and Reply Briefs**

The parties must comply with 52 Pa.Code §§ 5.501, et seq., regarding the preparation and filing of briefs. Briefs must include proposed conclusions of law and proposed ordering paragraphs. Page limitations on briefs will be discussed on or before the last day of hearing. The parties shall submit to the presiding ALJs one hard copy of their briefs and one copy by email. The electronic version of a brief must be prepared on an IBM compatible system in Microsoft Office Word format. If in doubt, please email the presiding ALJs for clarification.

IMPORTANT NOTICE: All briefs must conform to the “Instructions for Briefs” attached hereto as Appendix A and made a part of this order. Also, Rate Case Tables will be electronically provided to the parties. PWSA is granted leave to develop rate tables consistent with the cash flow method for calculating the revenue requirement. These Tables must be used by PWSA and all parties in this proceeding. If any party fails to follow these instructions in the smallest detail that party’s position will not be considered, regardless of where the record may support it or the position of any other party to this proceeding. Your anticipated cooperation will be appreciated.

**Modification**

Any of the provisions of this Prehearing Order may be modified upon motion and good cause shown by any party in interest.

Date: May 19, 2020  /s/

Mary D. Long

Administrative Law Judge

/s/

Emily I. DeVoe

Administrative Law Judge

**APPENDIX A**

**INSTRUCTIONS FOR BRIEFS**

Each brief shall follow the general organization shown herein.

Adjustments contained in each brief shall:

1. Be based on a specific test year, to be selected before the close of record;
2. be complete and self-contained;
3. include accurate reference to the appropriate record sources;
4. be on a before-income-tax basis;
5. be detailed to demonstrate the step-by-step calculation of that adjustment together with appropriate accurate record references;
6. include concomitant rate base, revenue, expense, depreciation expense, and tax adjustments set forth, together with the details of their calculation;
7. include with the brief those calculations which are the basis for proposed adjustments but which are incomplete on the record.

Tables showing all proposed rate base and income adjustments shall be submitted with each brief which includes such adjustment.

STANDARD FORMAT

1. Introduction
2. Summary of Argument
3. Rate Base
4. Fair Value
5. Plant in Service
6. Depreciation Reserve
7. Additions to Rate Base
8. Conclusion
9. Revenues
10. Expenses
11. Taxes
12. Rate of Return
13. Miscellaneous Issue(s)
14. Rate Structure
15. Cost of Service
16. Revenue Allocation
17. Tariff Structure
18. Summary and Alternatives
19. Conclusion

**R-2020-3017951, R-2020-3017970, P-2020-3019019 - PA PUBLIC UTILITY COMMISSION v. PITTSBURGH WATER AND SEWER AUTHORITY**

*REVISED 5/19/20*

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1. Docket No. P-2020-3019019. OSBA also filed a complaint to the DSIC petition at C-2020-3019302.  
    [↑](#footnote-ref-1)
2. Docket No. C-2020-3019305 (Water); C-2020-3019302 (Wastewater).  
    [↑](#footnote-ref-2)
3. Docket No. C-2020-3019348 (Water). [↑](#footnote-ref-3)
4. Docket No. C-2020-3019349 (Wastewater). [↑](#footnote-ref-4)
5. Each party filed answers to PWSA’s March 6, 2020 motions. [↑](#footnote-ref-5)
6. *See* Docket No. U-2020-3015258. [↑](#footnote-ref-6)
7. For parties accepting electronic service, the documents are to be served electronically on the date indicated, by 4:00 p.m. unless otherwise indicated. For parties not accepting electronic service and not located in Harrisburg, documents are due in hand the following business day. [↑](#footnote-ref-7)
8. See Interim Order dated April 27, 2020 at Docket U-2020-3015258. [↑](#footnote-ref-8)