



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

April 16, 2021

Via Electronic Filing

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

Re: Implementation of Chapter 32 of the Public Utility Code
Re Pittsburgh Water and Sewer Authority
Docket Nos. M-2018-2640802 et al.
**I&E Letter in Support of PWSA's Motion to Hold in Abeyance the Stage 2
Stormwater Compliance Plan**

Dear Secretary Chiavetta:

Please allow this letter to serve as formal notice that the Bureau of Investigation and Enforcement (“I&E”) supports the Pittsburgh Water and Sewer Authority’s (“PWSA”) above-referenced Motion to Hold in Abeyance the Stage 2 Stormwater Compliance Plan. Specifically, PWSA’s Motion requests that the proceeding to address the Stormwater Compliance Plan be held in abeyance pending resolution of PWSA’s current water, wastewater, and stormwater rate case proceedings.¹ At the outset, I&E acknowledges that when the Commission issued its February 4, 2021 Order in this case, which in part directs the litigation timeline for Stage 2 stormwater compliance issues,² it did so without the knowledge that PWSA would file a stormwater base rate case that would directly align with the time period prescribed for the PWSA Stage 2 Compliance Plan case.³ But now that concurrent, but potentially conflicting stormwater proceedings have materialized and their timeframes have aligned, I&E supports PWSA’s Motion for the reasons set forth below.

First, I&E shares PWSA’s concerns that its pending stormwater rate case, which includes a request for approval of a stormwater tariff and stormwater fee, would lead to difficulty in determining which specific stormwater issues should be addressed in the rate case and which should be reserved for the pending Stage 2 Compliance Plan case.⁴ From I&E’s perspective, the difficulty PWSA references should not be viewed simply an administrative one, because it has potential substantive implications as well. Specifically, PWSA’s stormwater rate and compliance filings each represent an issue of first impression before the Commission, and the Commission currently has no regulations or policies specifically related to stormwater

¹ PWSA’s Motion, p. 1. I&E notes that PWSA filed its Stage 2 Compliance Plan on April 9, 2021 and three base rate cases on April 13, 2021: water (R-2021-3024773), wastewater (R-2021-3024774), and stormwater (R-2021-3024779). By separation motion, PWSA is seeking to consolidate all three rate filings.

² Id. at ¶¶10-11.

³ PWSA’s Motion, ¶¶20-21.

⁴ Id. at p. 1.

management.⁵ With this in mind, it is incumbent on the parties to provide a thorough and well-supported record to the Commission for its consideration in each of these novel cases, and their current alignment is not conducive to that outcome.

At this early juncture, it is unclear what issues I&E's full investigation of PWSA's proposed stormwater rates and tariff may reveal. It is equally unclear whether and how the stormwater issues I&E identifies in PWSA's stormwater rate case may trigger a need for compliance that is not yet identifiable. To be sure, PWSA's Motion indicates that its stormwater rate case will address a "broad range of issues"⁶ related to stormwater service, and that difficulty exists in determining what items should be addressed in each case.⁷ I&E wishes to avoid a scenario where such difficulty compromises the integrity of one or both of the important stormwater-related proceedings when holding the stormwater compliance issues in abeyance is an available avenue of resolution.

I&E also submits that granting PWSA's request would help ensure that parties are not unwittingly and simultaneously litigating novel stormwater issues in two separate proceedings, potentially with different litigants, leading to conflicting dispositions. PWSA's Motion indicates that "many issues are likely to overlap"⁸ and its recognition of that likelihood raises significant concerns for I&E. The simultaneous litigation of stormwater issues in both the stage 2 Compliance Plan case and PWSA's rate case could not only lead to uncertainty and incongruent outcomes, but it could do so in a way that would also substantially challenge, if not waste, the resources of PWSA, its ratepayers, the parties, and the Commission. For these reasons, I&E supports PWSA's Motion and respectfully requests that the Commission grant it without modification.

Respectfully,



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cc: Per Certificate of Service

⁵ PWSA Stormwater Compliance Plan, p. 9; see also 66 Pa. C.S. §3201 whereby the Commission has jurisdiction over the utility service of storm water provided by an "Authority" established by Pennsylvania cities of the second class and such jurisdiction is currently only applicable to the PWSA. The Public Utility Code does not otherwise contemplate the Commission's regulation of stormwater service, and the filings referenced in this letter represent the first stormwater cases before the Commission.

⁶ PWSA Motion, ¶13.

⁷ Id. at p. 1.

⁸ Id. at ¶16.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority : Docket Nos. M-2018-2640802 (Water)
: M-2018-2640803 (Wastewater)
:

Petition of the Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan : Docket Nos. P-2018-3005037
: P-2018-3005039
:

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Letter** dated April 16, 2021, in the manner and upon the person listed below.

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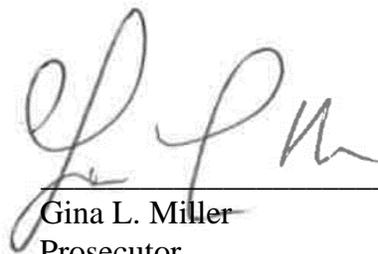
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