**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held May 20, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

John F. Coleman, Jr.

Ralph V. Yanora

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| Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1  Petition of Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan | M-2018-2640802  M-2018-2640803  P-2018-3005037  P-2018-3005039 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Petition for Amendment of the Commission’s February 4, 2021 Final Order Regarding Procedural Process for Customer Service and Collection Issues (Petition) and the Motion to Hold in Abeyance the Stage 2 Stormwater Compliance Plan (Motion) filed by the Pittsburgh Water and Sewer Authority (PWSA or Authority) on April 9, 2021, and April 13, 2021, respectively. Both the Petition and the Motion were filed in response to the Commission’s Opinion and Order entered February 4, 2021 (*February 2021 Order*). On April 16, 2021, the Commission’s Bureau of Investigation and Enforcement (I&E) filed letters in support of the Petition and the Motion. On April 28, 2021, the Office of Consumer Advocate (OCA) and Pittsburgh UNITED (UNITED) filed their respective Answers to the Petition. Also, on April 28, 2021, the OCA filed a letter in support of the Motion. For the reasons stated below, we shall: (1) grant the Petition, in part, and deny it, in part, and (2) grant the Motion, consistent with this Opinion and Order.

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# History of the Proceeding

On September 28, 2018, the PWSA filed its Compliance Plan in response to the Final Implementation Order laying out the process for implementing Act 65 of 2017 (Act 65) and the amendments to Chapter 32 of the Public Utility Code (Code).[[1]](#footnote-2) Thereafter, the statutory advocates and various parties intervened and participated in the proceeding, including I&E, the OCA, the Office of Small Business Advocate (OSBA), the Pennsylvania-American Water Company (PAWC), and UNITED.

An evidentiary hearing was held on August 21, 2019, before Deputy Chief Administrative Law Judge (ALJ) Mark A. Hoyer and ALJ Conrad A. Johnson. On September 13, 2019, the PWSA, I&E, the OCA, the OSBA, UNITED, and PAWC filed a Partial Settlement.

In their Recommended Decision (R.D.) issued on October 29, 2019, the ALJs found that the Partial Settlement was in the public interest and recommended its approval without modification. Additionally, the ALJs recommended that the Commission approve without modification the PWSA’s residential Lead Service Line Replacement (LSLR) Program, which was revised over the course of the litigation and by which the PWSA has committed to continuous evaluation to meet its target date of replacing all residential service lines in its system by 2026; and therefore, the ALJs found the PWSA’s LSLR Program to be in the public interest. R.D. at 1*.*

The PWSA, I&E, the OCA, the OSBA, and UNITED filed Exceptions to the Recommended Decision on November 18, 2019, and Replies to Exceptions on December 3, 2019.

In an Opinion and Order entered on March 26, 2020 (*March 2020 Order*)*,* we adopted and modified the Partial Settlement. Additionally, we granted, in part, and denied, in part, the Exceptions filed by the PWSA and I&E; denied the Exceptions of the OCA, the OSBA and UNITED; and adopted and modified the ALJs’ Recommended Decision.

On April 10, 2020, the PWSA filed a Petition for Reconsideration, Clarification and/or Amendment and UNITED filed a Petition for Reconsideration and Clarification to the *March 2020 Order*; and on April 20, 2020, I&E, the OSBA, UNITED, and PWSA filed their respective Answers to these filings.

In an Opinion and Order entered June 18, 2020 (*June 2020 Order*), we ordered that the modifications to the Partial Settlement set forth in the *March 2020 Order* relating to partial LSL replacements be held in abeyance while the Parties conferred on the remaining issues and pending the issuance of a subsequent Opinion and Order. We also ordered the PWSA to file its Proposal to address these issues by September 16, 2020. *June 2020 Order* at 158.

By Secretarial Letter dated September 10, 2020, the Commission granted the PWSA’s request for an extension and directed the filing of the Proposal by September 30, 2020. The PWSA filed its Proposal on September 30, 2020, and the OCA and UNITED filed their respective Comments to the Proposal on October 15, 2020. The PWSA filed Reply Comments on October 26, 2020.

In the *February 2021 Order*, we resolved the remaining contested issues relating to PWSA’s Proposal for partial LSL replacements. Additionally, we provided direction regarding the commencement of Stage 2 of the Compliance Plan proceeding.

On April 9, 2021, the PWSA filed its Stage 2 Compliance Plan: Chapters 14 & 56, the Discontinuance of Service to Leased Premises Act, and Collections.[[2]](#footnote-3) On April 12, 2021, the PWSA filed its Stage 2 Compliance Plan: Stormwater.

As indicated above, the PWSA filed its Petition on April 9, 2021, and its Motion on April 13, 2021.

Also, on April 13, 2021, the PWSA filed a combined base rate case at Docket Nos. R-2021-3024773 (water), R-2021-3024774 (wastewater), and R‑2021‑3024779 (stormwater) (collectively, 2021 Base Rate Case).

On April 16, 2021, I&E filed letters in support of the Petition and the Motion.

By Secretarial Letter dated April 23, 2021, the Commission required any Answers to the Petition and/or Motion to be filed by April 28, 2021.

On April 28, 2021, the OCA filed an Answer to the Petition and a letter in support of the Motion. Also, on April 28, 2021, UNITED filed an Answer to the Petition.[[3]](#footnote-4) On April 29, 2021, the OCA and UNITED filed their respective comments to the Stage 2 compliance filings.

# Discussion

**Legal Standards**

As a preliminary matter, we note that we are 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). Therefore, any issue that the Commission does not specifically address or delineate in its decision shall be deemed to have been duly considered and denied without further discussion.

The Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and (g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

“Petitions for rescission or amendment may be filed at any time according to the requirements of Section 703(g) of the act (relating to fixing of hearings).” 52 Pa. Code § 5.572(d). Accordingly, the instant Petition before us has been timely filed. Our standard of review in determining whether to allow a petition for special relief is discretionary. *West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995).

Under Section 5.572(d), a party may seek relief from a final Commission order at any time by petition for rescission or amendment. In such cases, the petition must allege circumstances which warrant disturbing the finality of orders to grant special relief. *Feleccia v. PPL Electric Utilities Corp.*, *et al.*, Docket No. C-20016210 (Order entered March 7, 2003) at 2.

As previously noted, the legal standard of review in determining whether to allow a petition for special relief is discretionary. *West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995) (Commission has discretion whether to act on petition for rescission or amendment of prior order). Therefore, under the discretionary standard of review, we will exercise our discretion to disturb a final order only under circumstances deemed appropriate*. City of Pittsburgh v Pa. Department of Transportation*, 416 A.2d 461 (Pa. 1980).

While a Section 5.572(d) petition may raise any matter to persuade us to exercise our discretion to amend or rescind a prior Commission order, it is not appropriate to allow parties to relitigate matters already decided. “Parties . . ., cannot be permitted [a second opportunity] . . ., to raise the same questions which were specifically considered and decided against them.” *Duick v Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)). Exercise of Commission discretion to disrupt the finality of prior Commission orders is appropriate only where a Section 5.572(d) petition raises “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

***February 2021 Order***

In the *February 2021 Order*, we provided direction regarding the commencement of Stage 2 of the Compliance Plan proceeding. This direction was deemed necessary in light of the Final Order entered on December 3, 2020, which approved a Joint Petition for Settlement (Rate Case Settlement) for the PWSA’s water and wastewater rate cases.[[4]](#footnote-5) The Rate Case Settlement proposed, *inter alia*, to modify the Commission’s prescribed plan for moving the PWSA further into compliance with Act 64 of 2017, the Code and the Commission’s Regulations. We noted that the Rate Case Settlement modified, in part, the predetermined staged review of the PWSA’s compliance by agreeing to: (1) defer development of the PWSA’s stormwater tariff to the PWSA’s upcoming water, wastewater, and stormwater rate filings; and (2) request consolidation of Stage 2 stormwater issues with the PWSA’s upcoming water, wastewater, and stormwater rate filings. Because the Rate Case Settlement appeared to conflict with the pre-determined staged review of the PWSA’s Compliance Plan, we found it necessary to provide clarity. *February 2021 Order* at 62-63 (citing Rate Case Settlement at 7, Sections III.9.B.1.-III.9.B.2).

We explained that the Commission directed the following regarding the PWSA’s compliance plans:

As to the compliance plans, the Commission expects that these plans will detail how PWSA will reach ultimate end-state compliance with the Public Utility Code and Commission regulations. That is, after the compliance plans achieve full force and effect through a Commission order approving the plans, the Commission will enforce those orders as it would any other.

*February 2021 Order* at 63 (quoting *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority, Final Implementation Order*, Docket Nos. M‑2018-2640802 and M‑2018‑2640803 (Order entered March 15, 2018) (*Final Implementation Order* at 33).

In addition, we emphasized that the *Final Implementation Order* directed the PWSA to develop a plan to implement a separate tariff for its stormwater service, along with a compliance plan, to be filed no later than its next wastewater base rate case filing. We further indicated that, by the Secretarial Letter dated November 28, 2018 (*November 2018 Secretarial* *Letter*), the Commission established two stages for review for the PWSA Compliance Plan. The *November 2018 Secretarial Letter* noted that the focus for Stage 2 will be on Chapter 56 billing and collection issues and the development of a stormwater tariff. To the extent perceived conflicts may arise between the PWSA rate proceeding and the staged litigation of the PWSA Compliance Plan, we stated that the Commission would entertain resolution of those conflicts by motion or petition within Stage 1 of the PWSA Compliance Plan. *February 2021 Order* at 63 (citing *November 2018 Secretarial Letter* at 3).

Next, we explained that by the Secretarial Letter dated January 24, 2020 (*January 2020 Secretarial* *Letter*), the Commission provided additional direction regarding Stage 2 of the PWSA’s Compliance Plan. Among other things, the *January 2020 Secretarial Letter* reiterated that the PWSA must segregate services and property such that the Commission and interested parties are able to engage in a meaningful review of its Compliance Plan. It also noted that Stage 2 would include issues deferred from Stage 1 to accommodate the PWSA Compliance Plan workshops and any matters deferred from Stage 1 in the final Stage 1 Compliance Plan order. *February 2021 Order* at 64 (citing *January 2020 Secretarial Letter* at 2).

Finally, we quoted the language directing that Stage 2 of the PWSA’s Compliance Plan shall proceed as follows:

* No later than 60 days after the entry of a final unappealable order on Stage 1, PWSA will file with the Secretary materials related to Stage 2 of its Compliance Plan.
* No later than twenty (20) days after filing of the Stage 2 materials, Stakeholders may file comments prior to assignment to our Office of Administrative Law Judge (OALJ). However, comments filed at that early stage will not be included in the evidentiary record developed by OALJ.
* No later than forty-five (45) days after the filing of PWSA’s Stage 2 materials, the Commission will, via Secretarial Letter, assign Stage 2 of the Compliance Plan to the OALJ for the resolution of any matters that PWSA or interested parties may seek to develop. The Commission will attach to that Secretarial Letter the Stage 2 reports and directed questions authored by Commission staff regarding issues to be addressed by PWSA and interested parties. The Bureau of Consumer Services (BCS) Stage 2 report and directed questions shall address matters relating to PWSA compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations. The Bureau of Technical Utility Services (TUS) Stage 2 report and directed questions shall address matters related to PWSA operations as a regulated stormwater utility.
* Consistent with the direction of this Secretarial Letter and previously established schedules, OALJ is hereby directed to incorporate the Stage 2 Initial Report and directed questions into its Prehearing Order and to conduct evidentiary hearings to address matters raised therein.
* No later than nine (9) months from the date of assignment of Stage 2 to OALJ, OALJ will issue a recommended decision on the matters raised in Stage 2.

*Id.* at 64-65 (quoting *January 2020 Secretarial Letter* at 2-3).

In our disposition, we reasoned that neither the *November 2018 Secretarial Letter*, nor the Commission’s approval of the Rate Case Settlement, were intended to obviate the PWSA’s responsibility to file with the Commission a compliance plan for stormwater service. We explained that the reference to “materials related to Stage 2 of [PWSA’s] Compliance Plan” in the *January 2020 Secretarial Letter* was intended to reference revisions to the PWSA’s Compliance Plan needed to segregate the PWSA water, wastewater, and stormwater services and property. We determined that such segregation was necessary for the Commission and interested parties to engage in a meaningful review of the PWSA’s compliance with Chapters 14 and 56 for water, wastewater, and stormwater services, the PWSA stormwater service compliance with the Code and Commission Regulations and any matters deferred from Stage 1 in the final Stage 1 Compliance Plan Order. Finally, we emphasized that to the extent perceived conflicts may arise between a PWSA rate proceeding and the staged litigation of the PWSA Compliance Plan, the Commission will continue to entertain resolution of those conflicts by motion or petition within Stage 2 of the Compliance Plan. *February 2021 Order* at 65.

**Petition and Replies**

In its Petition, the PWSA proposes an alternative procedural track for Stage 2 of the Compliance Plan. Rather than utilizing the procedure set forth in the *January 2020 Secretarial Letter* and reiterated in the *February 2021 Order*, the Authority requests the following:

* Filing of Stage 2 Compliance Plan by PWSA on April 9, 2021;
* Establishment of a time period for informal discovery and workshops among the parties and with Staff;
* Filing of comments by stakeholders within 20 days after conclusion of the informal discovery and workshop period;
* Issuance of an Order by the Commission, of which the Commission would determine the scope and which could detail its initial review of PWSA’s Stage 2 Compliance Plan and provide additional direction, such as:
* Direct the further procedural process for review;
* Seek additional information from PWSA;
* Provide another comment period or schedule further workshops, upon receipt of that additional information (similar to the process the Commission uses during the review of a universal service plan);
* Identify specific areas in which the Commission tentatively concludes that PWSA is or is not in compliance;
* Offer PWSA another opportunity to explain how it will come into compliance without the need to refer the issue(s) to OALJ; and
* Detail specific areas that the Commission has determined would be best addressed through the OALJ process, including the issuance of Directed Questions.
* Assignment of remaining issues in dispute to the OALJ;
* Evidentiary hearings conducted by OALJ to address the unresolved issues in the Stage 2 Compliance Plan and Directed Questions; and
* Issuance of Recommended Decision by OALJ within 9 months of receiving the assignment of Stage 2 Compliance Plan.

Petition at 6.

The PWSA argues that the purpose of the modifications is to establish a process that permits continued informal dialogue with Commission staff and interested stakeholders to more quickly identify issues that may be addressed without the need for litigation. Under its proposal, the PWSA submits that the Parties could conduct formal or informal discovery to obtain additional information from the Authority and could engage in settlement discussions. The Authority submits that, as an informal proceeding that has yet to be referred to the OALJ, Commission staff would be actively involved in the process, which would be critical to providing perspective and would ideally avoid a future situation where the Parties submit a settlement, after a litigation, and the Commission issues an order rejecting the terms. According to the PWSA, the proposed changes to the process would significantly narrow disputed issues, prior to the Stage 2 Compliance Plan being referred to the OALJ for evidentiary hearings and the issuance of a decision. The PWSA asserts that such a narrowing of issues will help guide the Parties to focus their efforts during the litigation on the issues that might benefit from the development of a record to assist the Commission in reaching a final conclusion. *Id*. at 7.

The PWSA submits that the modified procedure is necessary due to the recent filing of the Authority’s 2021 Base Rate Case.[[5]](#footnote-6) Under the projected schedules, the PWSA contends that the Parties would be litigating the 2021 Base Rate Case nearly simultaneously with the Stage 2 Compliance Plan. According to the PWSA, it takes a great deal of dedication and time for the Parties to discuss the issues in a way that allows them to reach consensus on issues. Modifying the procedure schedule, the Authority continues, would reduce scheduling conflicts and facilitate efforts to amicably resolve as many issues as possible in the Stage 2 Compliance proceeding and the 2021 Base Rate Case. Moreover, the Commission has previously expressed a willingness to entertain resolutions of potential procedural conflicts with the Compliance Plan proceedings. Petition at 9-11.

In further support, the PWSA argues that the modification of the procedural schedule would be an efficient way to address a myriad of customer service issues so that only those issues that the Commission identifies for litigation need to be referred to the OALJ. The PWSA also asserts that the Commission has recognized the need to address Chapter 56 and related issues with stakeholders. The Authority contends that amending the *February 2021 Order* so that customer service issues may proceed in an orderly fashion with stakeholders and BCS offering input to the PWSA, so that efforts can begin promptly to achieve compliance with those issues identified as potentially needing further action. Petition at 13-14.

In its letter in support, I&E requests that the Commission approve the Petition without modification. I&E cites favorably to the Stage 1 Compliance proceeding in which the Parties’ ability to work collaboratively led to the successful resolution of 75% of the 185 issues being resolved prior to litigation thereby benefiting the Authority, its ratepayers, the Parties and the Commission. Further, I&E argues that it would still preserve the Parties’ ability to fully investigate the Stage 2 Compliance Plan, conduct discovery, and avail themselves of the litigation process for those issues that cannot be resolved. I&E Letter Response to Petition at 1-2.

In its Answer to the Petition, the OCA asserts that it supports the process established by the Commission in the *February 2021 Order* because it serves to have the remaining consumer protection issues resolved via a timely hearing and disposition by an ALJ. In addition, the OCA submits that it is not opposed to modifications of the Commission’s process that will still achieve the goal of a timely hearing and disposition by the ALJ. OCA Answer to Petition at 3.

The OCA argues that many of the concerns raised by the PWSA could be addressed with only minor modifications established by the Commission to accommodate further discovery. However, the OCA opposes any modifications to the Commission’s schedule that are open-ended and which could unreasonably delay resolution of customer service issues. The OCA notes the Authority’s proposal to add a workshop and informal discovery period to the schedule but does not specify any deadlines. Also, the PWSA adds a comment process of undefined duration. The OCA submits that any changes should be definitive and, for purposes of the proposed workshops/informal discovery period, thirty to forty-five days should be adequate. *Id*.

In its Answer to the Petition, UNITED also indicates that it is not opposed to a modest extension of the schedule to allow for informal discovery, collaboration, and workshops as set forth in the Petition. However, UNITED submits that the addition of an informal process prior to referral to the OALJ should be brief, not to exceed forty-five days, and must not shorten the litigation timeframe once the case is referred the OALJ. UNITED Answer to Petition at 2.

UNITED asserts that it is optimistic that this additional informal process may narrow some of the peripheral issues in this proceeding, however, it notes that many of the key issues regarding termination, collections, billing, and tenant accounts have been subject to dispute since 2018 through the course of multiple rate cases, the Stage 1 Compliance Plan proceeding, and the stakeholder process led by the BCS. UNITED states that it agreed to defer these issues for litigation in Stage 2 to allow adequate time to develop a record that is focused on customer billing, collections, and termination processes and procedures. According to UNITED, shortening the timeframe for litigation, in favor of an additional informal process, would impact the due process rights of stakeholders by curtailing their ability to conduct a meaningful evaluation. Thus, UNITED submits that any extension of the procedural schedule added to the front end of litigation must also be added to the deadline for a final order in this case. *Id*.

In addition, UNITED strongly opposes the Authority’s proposal to add a Tentative Order (TO) prior to the Stage 2 Compliance Plan proceeding being referred to the OALJ. Issuing a TO as proposed in the Petition, UNITED continues, would add significant time to the resolution of these critical issues, and may serve to improperly narrow the scope of issues before the Parties are able to formally investigate the filing before the OALJ. UNITED argues that such a process would foreclose a robust proceeding to ensure that the PWSA reaches full compliance with the Commission’s Regulations. Thus, UNITED requests that the Commission grant, in part, and deny, in part, the Petition. *Id*. at 1-2.

**Motion and Replies**

In its Motion, the PWSA requests that its Stage 2 Compliance Plan regarding the stormwater operations and tariff (Stormwater Compliance Plan) be held in abeyance pending resolution of the 2021 Base Rate Case, which includes the PWSA’s request for approval of a stormwater tariff and stormwater fee. The PWSA contends that holding the Stormwater Compliance Plan in abeyance while stormwater issues are addressed in the 2021 Base Rate Case is the most efficient use of resources for the Parties and the Commission. According to the PWSA, determining what stormwater issues should be addressed in the Compliance Plan proceeding and what should be addressed in the 2021 Base Rate Case will be a difficult task because of the overlap of many issues. The PWSA adds that separating which issues belong in which proceeding while both are proceeding simultaneously will result in a duplication of efforts. Motion at 7.

The PWSA submits that addressing the stormwater tariff-related issues first as part of the 2021 Base Rate Case will allow the Authority to put its initial stormwater tariff into effect and likely resolve many issues related to stormwater utility operations. Any remaining issues, the PWSA continues, could then be addressed through the Stormwater Compliance Plan proceeding after the 2021 Base Rate Case has concluded. The PWSA asserts that it is willing to address all issues related to the stormwater utility service as part of the 2021 Base Rate Case and, thus, the abeyance would not affect the Parties’ ability to fully investigate the Authority’s stormwater proposal in the context of that case. *Id*. at 7-8.

The PWSA argues that Chairman Dutrieuille in her statement regarding PWSA’s 2020 base rate case stated: “Commission Staff retains the ability to issue directed questions to the Authority before it files its next combined water, wastewater, and stormwater tariff. Further, the Commission may also exercise its prerogative to issue stormwater related inquiries upon action to suspend any future combined tariff filing.” *Id*. at 8 (quoting *Pa. PUC v. Pittsburgh Water and Sewer Authority – Water and Wastewater*, Docket Nos. R-2020-3017951, *et al*. (Chairman Dutrieuille Statement December 3, 2020) at 2). According to the PWSA, Commission Staff’s ability to issue directed questions with the rate case suspension order will not be affected by holding the Stormwater Compliance Plan in abeyance and such directed questions could be useful for the Parties as they proceed to address stormwater issues in the rate case. *Id*.

The PWSA adds that the Commission has retained the ability to resolve any conflicts between the staged Compliance Plan process and the 2021 Base Rate Case and has stated that it will entertain potential resolutions of those conflicts by motion or petition. Thus, the Authority contends that the Commission has anticipated this type of situation arising and has expressed its willingness to resolve such conflicts. The Authority argues that holding the Stormwater Compliance Plan in abeyance is a reasonable way to alleviate the challenges of addressing stormwater issues in two simultaneous proceedings while ensuring that the ultimate goal of full compliance with the Commission’s Regulations is attained. *Id*.

In its letter in support of the Motion, I&E shares the PWSA’s concerns that the 2021 Base Rate Case, which includes a request for approval of a stormwater tariff and stormwater fee, would make it difficult to determine which specific stormwater issues should be addressed in the rate case and which should be reserved for the pending Stage 2 Compliance Plan case. I&E argues that such difficulties present substantive concerns because the Authority’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 management. I&E Letter in Support of Motion at 1-2.

I&E contends that, at this early juncture, it is unclear what issues I&E’s full investigation of the proposed stormwater rates and tariff may reveal. I&E adds that it is equally unclear whether and how the stormwater issues I&E identifies in the stormwater rate case may trigger a need for compliance that is not yet identifiable. According to I&E, it is best to avoid a scenario that 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. Moreover, the simultaneous litigation of stormwater issues in both the Stage 2 Compliance Plan case and 2021 Base Rate Case could lead to uncertainty and incongruent outcomes, while also substantially challenging and wasting the resources of the PWSA, its ratepayers, the Parties, and the Commission. Thus, I&E supports the Motion and respectfully requests that the Commission grant it without modification. *Id*. at 2.

In its letter in support of the Motion, the OCA also supports the PWSA’s request to hold in abeyance the Stage 2 Compliance Plan regarding the Stormwater Compliance Plan pending resolution of the 2021 Base Rate Case. The OCA agrees with the PWSA’s argument that it would be most efficient to address stormwater issues in the rate case and, after entry of the Commission’s Order in that proceeding, reopen the Stormwater Compliance Plan proceeding to address any remaining stormwater issues. OCA Letter in Support of Motion at 1.

**Disposition**

Upon review, we shall exercise our discretion to modify the *February 2021 Order*. In the interest of promoting dialogue and potential settlement discussions, we agree with the PWSA that it would appear to be beneficial to extend the time period for formal and informal discovery pertaining to the Stage 2 Compliance Plan customer service issues. However, the Petition as proposed requests that the Commission amend the defined procedural schedule to allow for an open-ended, informal discussion period before referring the proceeding to the OALJ. Although we acknowledge the Authority’s concerns about the time and resources needed to address the concurrent 2021 Base Rate Case, we find that removing the parameters set forth in the *February 2021 Order* could potentially delay resolution of significant customer service issues which may be at issue. Accordingly, we shall grant the Petition, in part, to extend the time period for discovery and workshops among the Parties and with the Commission’s Bureau of Consumer Services, as deemed necessary, by seventy-five days and shall deny the remainder of the Petition.

In denying the additional proposals, including the suggestion of an interim Order prior to the Stage 2 Compliance Plan proceeding being referred to the OALJ, we are acting to preserve the Parties’ rights to adequately develop an evidentiary record in a defined manner. Although the Commission encourages settlements, we are cognizant that many of the key issues regarding termination, collections, billing, and tenant accounts have been disputed throughout this proceeding. Thus, many of these issues may remain in dispute during the course of any informal discovery period. Ultimately, an evidentiary record may need to be developed by which the Commission can review and determine the resolution of any of the remaining litigated issues. It is in the public interest to resolve such disputes as expeditiously as possible.

Although the OCA and UNITED have suggested a maximum extension of forty-five days, we find that the proposed extension is insufficient to accommodate the involvement of BCS in an effective workshop process prior to the referral of the remaining Stage 2 issues to the OALJ given the Commission’s experience with the four Billing and Collections Workshops that occurred in 2019. The scheduling and facilitation of the workshop process by Commission Staff and the preparation of the Stage 2 report and directed questions following any workshops will require additional time; and, based upon Staff experience in prior workshops, a maximum extension of seventy-five days (*i.e*., a total of 120 days following the filing of the Stage 2 Compliance Plan) is deemed appropriate under the circumstances. Accordingly, we will direct BCS upon entry of this Opinion and Order to issue a Secretarial Letter outlining the timing and details of the workshop process.[[6]](#footnote-7)

Further, we shall amend the procedural schedule set forth in the *January 2020 Secretarial Letter* and reiterated in the disposition of the *February 2021 Order* as follows (amendments in strike-through and underline):

* No later than 60 days after the entry of a final unappealable order on Stage 1, PWSA will file with the Secretary materials related to Stage 2 of its Compliance Plan.
* No later than twenty (20) days after filing of the Stage 2 materials, Stakeholders may file comments prior to assignment to our Office of Administrative Law Judge (OALJ). However, comments filed at that early stage will not be included in the evidentiary record developed by OALJ.
* No later than ~~forty-five (45)~~ one-hundred and twenty (120) days after the filing of PWSA’s Stage 2 materials, the Commission will, via Secretarial Letter, assign Stage 2 of the Compliance Plan to the OALJ for the resolution of any matters that PWSA or interested parties may seek to develop relating to PWSA compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s Regulations and issues deferred from the final Stage 1 Compliance Plan Order but excluding stormwater issues. The Commission will attach to that Secretarial Letter the Stage 2 reports and directed questions authored by Commission staff regarding issues to be addressed by PWSA and interested parties. The Bureau of Consumer Services (BCS) Stage 2 report and directed questions shall address matters relating to PWSA compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations. ~~The Bureau of Technical Utility Services (TUS) Stage 2 report and directed questions shall address matters related to PWSA operations as a regulated stormwater utility.~~[[[7]](#footnote-8)]
* Consistent with the direction of this Secretarial Letter and previously established schedules, OALJ is hereby directed to incorporate the Stage 2 Initial Report and directed questions into its Prehearing Order and to conduct evidentiary hearings to address matters raised therein.
* No later than ~~nine (9) months from the date of assignment of Stage 2 to OALJ~~ May 25, 2022, OALJ will issue a recommended decision on the matters raised in Stage 2.

Additionally, upon consideration of the Motion, which is supported by the OCA and I&E and is unopposed by the remaining Parties, we shall grant the PWSA’s request to hold the Stormwater Compliance Plan in abeyance pending the resolution of the 2021 Base Rate Case. Approving this procedure will facilitate the development of the stormwater related issues in the context of the 2021 Base Rate Case. We find that holding the Stormwater Compliance Plan in abeyance is a reasonable way to alleviate the challenges of addressing stormwater issues in two simultaneous proceedings and will help best utilize the resources of the Parties and the Commission to resolve these issues. We also direct the PWSA to file a revised Stormwater Compliance Plan after the entry of a final Commission Order resolving the 2021 Base Rate Case, but no later than January 31, 2022, that incorporates any changes and requirements agreed upon as part of that proceeding. To the extent that any issues remain pending in the Stormwater Compliance Plan following the conclusion of the 2021 Base Rate Case, within thirty days of the PWSA’s filing of a revised Stormwater Compliance Plan, TUS shall issue a second set of directed questions which identifies, but is not limited to, such issues to be referred to this proceeding.[[8]](#footnote-9)

Coinciding with the directives above pertaining to the issuance of a Recommended Decision on Chapter 14 of the Code and Chapter 56 of our Regulations and issues deferred from the final Stage 1 Compliance Plan Order, the OALJ shall issue a Recommended Decision on the Stormwater Compliance Plan by May 25, 2022.

# 

# Conclusion

For the reasons stated, *supra*, we shall grant the Petition, in part, and deny it, in part, and grant the Motion, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Amendment of the Commission’s February 4, 2021 Final Order Regarding Procedural Process for Customer Service and Collection Issues filed by the Pittsburgh Water and Sewer Authority on April 9, 2021, is granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Motion to Hold in Abeyance the Stage 2 Stormwater Compliance Plan filed by the Pittsburgh Water and Sewer Authority on April 13, 2021, is granted, consistent with this Opinion and Order.

3. That the Commission’s Order entered February 4, 2021, pertaining to the procedural schedule for addressing the Stage 2 Compliance Plan issues pertaining to Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s Regulations and issues deferred from Stage 1 of the Compliance Plan proceeding is amended as follows:

No later than one-hundred and twenty (120) days after the filing of the Pittsburgh Water and Sewer Authority’s Stage 2 materials, the Commission will, via Secretarial Letter, assign Stage 2 of the Compliance Plan to the Office of Administrative Law Judge (OALJ) for the resolution of any matters that the Pittsburgh Water and Sewer Authority or interested parties may seek to develop relating to the Pittsburgh Water and Sewer Authority’s compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s Regulations and issues deferred from the final Stage 1 Compliance Plan Order but excluding stormwater issues. The Commission will attach to that Secretarial Letter the Stage 2 reports and directed questions authored by Commission staff regarding issues to be addressed by PWSA and interested parties. The Bureau of Consumer Services Stage 2 report and directed questions shall address matters relating to the Pittsburgh Water and Sewer Authority compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s Regulations.

Consistent with the direction of this Secretarial Letter and previously established schedules, OALJ is hereby directed to incorporate the Stage 2 Initial Report and directed questions into its Prehearing Order and to conduct evidentiary hearings to address matters raised therein.

No later than May 25, 2022, OALJ will issue a recommended decision on the matters raised in Stage 2.

4. That upon entry of this Opinion and Order the Commission’s Secretary’s Bureau and the Bureau of Consumer Services shall issue a Secretarial Letter pertaining to the scheduling of any informal workshops relating to the Pittsburgh Water and Sewer Authority’s compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s Regulations and issues deferred from the final Stage 1 Compliance Plan Order but excluding stormwater issues.

5. That the Stage 2 Compliance Plan pertaining to stormwater compliance filed by the Pittsburgh Water and Sewer Authority shall be held in abeyance pending the entry of a final Order in the combined base rate case at Docket Nos. R‑2021‑3024773 (water), R-2021-3024774 (wastewater), and R-2021-3024779 (stormwater).

6. That following the entry of a final Order in the combined base rate case at Docket Nos. R-2021-3024773, R 2021-3024774, and R-2021-3024779, but no later than January 31, 2022, the Pittsburgh Water and Sewer Authority shall file a revised Stormwater Compliance Plan and within thirty (30) days of that filing the Commission’s Bureau of Technical Utility Services shall draft a second report and directed questions identifying any Stage 2 Compliance Plan issues pertaining to stormwater compliance filed by the Pittsburgh Water and Sewer Authority remaining to be referred to this proceeding and assigned to the Office of Administrative Law Judge. That, further, the Office of Administrative Law Judge shall issue a Recommended Decision on Stage 2 Compliance Plan issues pertaining to stormwater compliance by May 25, 2022.

7. That in all other respects the Commission’s Order entered February 4, 2021, shall remain in full force and effect.

8. That a copy of this Opinion and Order be served on the Commission’s Bureau of Technical Utility Services and the Bureau of Consumer Services.

**BY THE COMMISSION,**

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Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 20, 2021

ORDER ENTERED: May 20, 2021

1. Pursuant to Act 65, the Commission has jurisdiction over the utility service of water, wastewater, and storm water provided by Pennsylvania cities of the second class and such jurisdiction is applicable to the PWSA. *See* *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority, Tentative Implementation Order*, Docket Nos. M-2018-2640802 and M-2018-2640803 (Order entered January 18, 2018). [↑](#footnote-ref-2)
2. On March 19, 2021, the PWSA filed a request for a four-day extension from the deadline for the filing of the Stage 2 Compliance Plan materials. By Secretarial Letter dated March 23, 2021, the Commission granted the extension. [↑](#footnote-ref-3)
3. On April 30, 2021, the PWSA filed a letter in response to the Answers of the OCA and UNITED, the purpose of which the Authority states “is to note the points of agreement among PWSA, OCA, and UNITED to assist the Commission’s consideration of PWSA’s procedural process request.” In its letter, the PWSA indicates its support for a forty-five day time period for informal discovery and workshops among the Parties and with Commission Staff. [↑](#footnote-ref-4)
4. *See Pa. PUC, et al., v. Pittsburgh Water and Sewer Authority – Water and Pittsburgh Water and Sewer Authority – Wastewater*, Docket Nos. R-2020-3017951, R‑2020-3017970, *et seq.* (Final Order entered December 3, 2020). [↑](#footnote-ref-5)
5. The PWSA states that when it filed its 2020 Base Rate Case on March 6, 2020, it proposed a multi-year plan, which would have avoided the need for the filing of a rate case in 2021. However, the PWSA asserts that the proposal was opposed by the Parties and was not made part of the Rate Case Settlement which was approved by the Commission without modification on December 3, 2020. Petition at 9. [↑](#footnote-ref-6)
6. In the Secretarial Letter, BCS retains the discretion to set a timeline for the completion of the exchange of any informal discovery or information and other logistical matters in order to best facilitate the conduct of such workshops. Although we are granting an extension which expands the informal discussion period, we encourage the Parties to diligently and promptly address all outstanding matters such that Commission Staff can prepare a Stage 2 Initial Report and directed questions for submission to the OALJ in advance of the deadline if possible. [↑](#footnote-ref-7)
7. As discussed below, we are granting the Motion and holding in abeyance the Stormwater Compliance Plan issues. [↑](#footnote-ref-8)
8. Further, we note the PWSA’s acknowledgement that the Authority and the Parties may benefit from TUS’s Stage 2 report and directed questions (TUS Directed Questions) addressing matters related to the PWSA operations as a regulated stormwater utility as they proceed to address stormwater issues in the rate case. Motion at 2. Therefore, the Commission’s Order to suspend the PWSA’s stormwater tariff filing will include stormwater related inquiries in the form of TUS Directed Questions. [↑](#footnote-ref-9)