



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

May 28, 2021

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission v.
Pittsburgh Water and Sewer Authority
Docket Nos.: R-2021-3024773 (Water)
R-2021-3024774 (Wastewater)
R-2021-3024779 (Stormwater)

I&E Prehearing Memorandum

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Prehearing Memorandum of the Bureau of Investigation and Enforcement (I&E)** in the above-captioned proceedings.

Copies are being served on parties of record per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic service.* Should you have any questions, please do not hesitate to contact me.

Sincerely,

Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 313863
(717) 787-8754
ginmiller@pa.gov

GLM/ac
Enclosures

cc: Honorable Eranda Vero – Office of Administrative Law Judge (*via email*)
Pamela McNeal, Legal Assistant – Office of Administrative Law Judge (*via email*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, <i>et al</i>	:	R-2021-3024773
	:	C-2021-3025473
v.	:	C-2021-3025516
	:	
Pittsburgh Water and Sewer Authority - Water	:	

Pennsylvania Public Utility Commission, <i>et al</i>	:	R-2021-3024774
	:	C-2021-3025471
v.	:	C-2021-3025517
	:	
Pittsburgh Water and Sewer Authority – Wastewater	:	

Pennsylvania Public Utility Commission, <i>et al</i>	:	R-2021-3024779
	:	C-2021-3025474
v.	:	C-2021-3025521
	:	
Pittsburgh Water and Sewer Authority - Stormwater	:	

**PREHEARING MEMORANDUM OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

To Administrative Law Judge Eranda Vero:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby submits this Prehearing Memorandum in the above-captioned dockets. The I&E prosecutor assigned to this proceeding is Gina L. Miller. Ms. Miller may be contacted as follows:

By mail: Gina L. Miller
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Harrisburg, PA 17120

By e-mail: ginmiller@pa.gov

Telephone: (717) 787-8754 (GLM)

I. BACKGROUND

On April 13, 2021, Pittsburgh Water and Sewer Authority (“PWSA”) filed with the Pennsylvania Public Utility Commission (“Commission”): (1) a water base rate case at Docket No. R-2021-3024773; (2) a wastewater base rate case at Docket No. R-2021-3024774; (3) a stormwater base rate case at Docket No. R-2021-3024779, (4) a Petition for Waiver of Statutory Definition of Fully Projected Future Test Year (“FPFTY Waiver Petition”); and (5) a Petition for Consolidation of Water, Wastewater, and Stormwater Rate Proceedings and For Authorization to Use Combined Water, Wastewater, and Stormwater Revenue Requirements (“Base Rate Consolidation Petition”).¹

The tariff filings that PWSA made on April 13, 2021 are three-fold. First, PWSA’s Supplement No. 7 to Tariff Water – Pa. P.U.C. No. 1 proposes a multi-year rate increase that would increase PWSA’s total annual operating revenues for water service by approximately \$12.6 million, or 10%, through rates effective January 12, 2022, and by approximately \$12.9 million, or 9.3%, through rates effective January 12, 2023. Next, PWSA’s Supplement No. 6 Tariff Wastewater - Pa. P.U.C. No. 1 proposes a multi-year rate decrease that will reduce PWSA’s total annual operating revenues for wastewater service by approximately \$7.8 million, or 10.6%, through rates effective January 12, 2022, and by approximately \$7.5 million, or 11.4%, through rates effective January 12, 2023. Finally, PWSA filed Tariff Storm Water - Pa. P.U.C. No. 1 proposing a multi-year rate increase that will raise PWSA’s total annual operating revenues for stormwater service by approximately \$17.8 million, or 3,118.3% through rates effective January 12, 2022, and by approximately \$5.9 million, or 32.3%, through rates effective January 12, 2023.

¹ In its Base Rate Consolidation Petition, PWSA requested that the Commission permit it to: (1) consolidate its water, wastewater, and stormwater base rate proceedings into a single proceeding and (2) permit PWSA to use a consolidated water, wastewater, and stormwater revenue requirement in the single proceeding for the requested base rate increases. *PA PUC v. Pittsburgh Water and Sewer Authority*, Consolidation Petition, R-2021-3024773 et al., p. 1 (April 13, 2021).

I&E entered its appearance in all three rate dockets referenced above on April 14, 2021. The Office of Consumer Advocate (“OCA”) filed its Notice of Appearance, a Formal Complaint, and a Public Statement in each of the three rate dockets on April 23, 2021. On April 26, 2021, Pittsburgh United filed a Petition to Intervene and Answer in each of the three rate proceedings. On April 26, 2021, OSBA filed a Notice of Appearance and Rate Complaint in each of the three rate proceedings.

On April 30, by way of a letter issued to Secretary Chiavetta and thereafter served upon then-active participants, Commissioner Yanora issued a letter setting forth issues he wished for the parties to examine in PWSA’s rate case. On May 17, 2021, PWSA filed a letter in response to the issues raised by Commissioner Yanora.

On May 20, 2021, pursuant to 66 Pa. C.S. § 1308(d), the Commission ordered suspension of each of the proposed tariff changes until January 12, 2022, unless permitted by Commission Order to become effective at an earlier date. With respect solely to the stormwater rate case, the Commission’s Order included an Attachment B, *Pennsylvania Public Utility Commission Technical Staff Report and Directed Questions Stage 2* (“Directed Questions”).² I&E notes that by issuance of the Directed Questions, the Commission concluded that it would be beneficial for the parties to have the questions available in these rate case proceedings, as they may be useful for the parties as they address stormwater issues through the rate case.³

As part of all of its base rate case suspension orders, the Commission directed that each of PWSA’s rate cases be assigned to the Office of Administrative Law Judge for the scheduling of hearings as may be necessary for the Administrative Law Judge to render a recommended decision. Subsequently, I&E received notice that Administrative Law Judge Eranda Vero (“ALJ

² *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority- Stage 2-Stormwater*, Pennsylvania Public Utility Commission Technical Staff Report and Directed Questions Stage 2, Docket No. M-2018-2640802 et al, (issued on May 20, 2021).

³ *Pa. PUC v. PWSA*, R-2021-3024779, Order, p. 3 (entered on May 20, 2021).

Vero”) would preside. ALJ Vero issued a Prehearing Conference Order on May 25, 2021 that established June 2, 2021 at 2 p.m. as the date and time for a telephonic prehearing conference in this case, and the deadline of May 31, 2021 for submission of a prehearing memorandum. I&E now submits this memorandum in compliance with ALJ Vero’s Prehearing Conference Order.

II. PWSA’S FPPTY WAIVER PETITION AND BASE RATE CONSOLIDATION PETITION

I&E does not oppose either PWSA’s FPPTY Waiver Petition or Base Rate Consolidation Petition for purposes of this case.⁴

III. ISSUES

The following list represents I&E’s preliminary determination of the potential issues in this proceeding:

1. Cost of Service Study (water/wastewater/stormwater)
2. PWSA’s stormwater fee proposal
3. Accuracy of Plant Improvement projections from last case
4. Rate structure (water/wastewater/stormwater)
5. Two-year phase in of rates
6. Allocation of revenue between water, wastewater, and stormwater
7. Debt Service Coverage
8. Cost of Debt
9. Debt Ratio
10. Credit Ratings
11. PAYGO Funding
12. Non-borrowed Cash
13. Various financial metrics
14. Overall revenue requirement
15. Salaries and wages
16. Employee Benefits
17. Chemical expenses
18. Equipment
19. Materials

⁴ I&E’s non-opposition in this case should not be construed as having force and effect beyond these proceedings, as I&E fully reserves its rights to oppose any future requests. Additionally, I&E notes that its non-opposition is premised, in part, on the reality that PWSA’s filing was prepared in a manner that would make separation impracticable during the timeframe permitted for these proceedings.

20. Repairs and Maintenance
21. Operating Contracts expenses
22. Office Rent
23. Professional services
24. Rate case expense
25. Misc. Admin expenses
26. PUC Assessment fees
27. Equipment Lease Rentals
28. Safety commitments that PWSA made in prior base rate cases

The list is as complete as can be made at this time. Additionally, I&E reserves the right to amend and supplement this issue list while discovery is on-going. Finally, I&E reserves the right to further amend and supplement its issue list to address any issues arising in any supplemental testimony and/or information that may be filed by PWSA and to address any currently unforeseen directives or developments in this case.⁵

IV. WITNESSES

It is currently expected that I&E may call the following witnesses without being limited thereto:

- Ethan Cline, Fixed Utility Valuation Engineer: Mr. Cline anticipates addressing issues identified as 1 through 6 in the above listing.
- Anthony Spadaccio, Fixed Utility Financial Analyst: Mr. Spadaccio anticipates addressing issues identified as 7 through 14 in the above listing.
- D.C. Patel, Fixed Utility Financial Analyst: Mr. Patel anticipates addressing issues identified as 15 through 27 in the above listing.
- Israel Gray, Safety Inspector and Fixed Utility Valuation Engineer. Mr. Gray anticipates addressing issue number 28 in the above listing.

⁵ I&E notes that on April 30, 2021, Commissioner Yanora issued a series of questions that he wished for the parties to address in this proceeding. While PWSA issued a response to Commissioner Yanora's questions on May 17, 2021, further supplements may be implicated pending parties' full review of the Directed Questions issued on May 20, 2021.

The I&E witnesses may be contacted through the contact information listed above for Ms. Miller. I&E reserves the right to substitute witnesses or call additional witnesses if warranted.⁶ All active parties will be notified of any amendments to the I&E witness list.

V. EVIDENCE

I&E expects to present all written direct, rebuttal, surrebuttal, and, if necessary, supplemental, testimony and accompanying exhibits at the evidentiary hearing. Moreover, I&E intends to rely on the PWSA's filing, answers to data requests and interrogatories, annual reports and other documents submitted to the Commission, other relevant Commission filings, any other relevant Commonwealth agency letters or reports, general financial market information sources and other public documents and reports. However, there may be issues of Commission policy or legal representation that are not properly the subject of testimony or factual issues that are clear on the record and need not be supported by testimony, I&E reserves the right to dispense with testimony when, in its opinion, an issue can be adequately addressed through briefing.

VI. DISCOVERY

Consistent with the discovery modification that were adopted in PWSA's 2020 base rate case,⁷ I&E requests that the Commission's Rules of Practice and Procedure for the conduct of discovery be modified as follows:

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.

⁶ The above issues list is provided without analysis of the positions of all parties to this proceeding and without the benefit of completed discovery.

⁷ *Pa. PUC v. PWSA*, Prehearing Order, pp. 7-8, R-2020-3017951 et al. (entered on May 19, 2020).

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.

VII. SCHEDULE

I&E has been working extensively with PWSA and several parties in an attempt to develop a proposed schedule that will be mutually agreeable. I&E notes that the Commission’s recent issuance of Directed Questions, which may warrant consideration in this case and supplemental testimony, as well as the existence of several other large base rate cases with schedules directly aligning with the statutory timeframe for this case, have led to I&E requesting that PWSA consider slightly extending the statutory timeline here. At this time, it is I&E’s understanding that PWSA is willing to extend the statutory timelines for its cases⁸ by one day beyond the January 12, 2022 suspension dates so as to permit the cases to be considered at the Commission’s public meeting on January 13, 2022.

⁸ 66 Pa. C.S. §1308(d).

I&E offers the following procedural schedule for Your Honor and parties' consideration, noting that it is I&E's current understanding that PWSA, OCA, OSBA, and Pittsburgh United have assented to this schedule:

Non-PWSA Direct Testimony	July 9, 2021
Rebuttal Testimony	August 9, 2021
Surrebuttal Testimony	August 20, 2021
Hearings	August 31-September 2, 2021
Main Briefs	September 22, 2021
Reply Briefs	October 4, 2021

VIII. SERVICE OF DOCUMENTS

For purposes of satisfying in-hand requirements for discovery responses, prepared testimony, and briefs during the closure of Commission offices, and consistent with Paragraph 8 of the Commission's March 20, 2020 Emergency Order,⁹ I&E will both only serve and accept electronic delivery of documents. Upon re-opening of Commission offices, and only on a forward-moving basis from that point onward, I&E requests parties provide a follow-up hard copy by regular first-class mail in addition to electronic delivery.

IX. PUBLIC INPUT HEARINGS

I&E intends to fully participate in all public input hearings deemed warranted in this case. Additionally, I&E advocates for the use of telephonic hearings public input hearings where possible.

⁹ Docket No. M-2020-3019262, *Re: Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*.

X. SETTLEMENT

I&E intends to participate in any settlement discussions and is willing to work with the parties to reach a resolution of any or all issues. In the event settlement discussions fail to result in a complete resolution of the matter, I&E is prepared to fully or partially litigate this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gina L. Miller", is written over a horizontal line.

Gina L. Miller
Prosecutor
PA Attorney ID No. 313863

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Date: May 28, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos.: R-2021-3024773 (Water)
	:	R-2021-3024774 (Wastewater)
Pittsburgh Water and Sewer Authority	:	R-2021-3024779 (Stormwater)

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Prehearing Memorandum** dated May 28, 2021, in the manner and upon the persons listed below:

Served via Electronic Mail Only

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