



Thomas J. Sniscak
(717) 703-0800
tjsniscak@hmslegal.com

Kevin J. McKeon
(717) 703-0801
kjmckeon@hmslegal.com

Whitney E. Snyder
(717) 703-0807
wesnyder@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

May 28, 2021

VIA ELECTRONIC FILING

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

Re: Pennsylvania Public Utility Commission v. Pittsburgh Water and Sewer Authority;
Docket No. R-2021-3024779 (stormwater); **CITY OF PITTSBURGH PETITION
TO INTERVENE**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is The City of Pittsburgh's Petition to Intervene to in the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

/s/ Whitney E. Snyder

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for The City of Pittsburgh

WES/das

Enclosures

cc: Yvonne S. Hilton, City Solicitor (yvonne.hilton@pittsburghpa.gov)
John F. Doherty, Associate City Solicitor (john.doherty@pittsburghpa.gov)
Lawrence H. Baumiller, Assistant City Solicitor (lawrence.baumiller@pittsburghpa.gov)
Per Certificate of Service

maintains its principal place of business at 414 Grant Street, 5th Floor City-County Building, Pittsburgh, PA 15219.

3. All correspondence and pleadings in this docket should be directed to PSU's counsel in this matter:

Thomas J. Sniscak, Attorney I.D. # 33891
Kevin J. McKeon, Attorney I.D. # 30428
Whitney E. Snyder, Attorney I.D. # 316625
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
(717) 236-1300
tjsniscak@hmslegal.com
kjmckeon@hmslegal.com
wesnyder@hmslegal.com

Yvonne S. Hilton, Attorney ID No. 74582
John F. Doherty, Attorney ID No. 56418
Lawrence H. Baumiller, Attorney ID No. 200387
City of Pittsburgh Department of Law
City-County Building, Suite 313
414 Grant Street
Pittsburgh, PA 15219
yvonne.hilton@pittsburghpa.gov
john.doherty@pittsburghpa.gov
lawrence.baumiller@pittsburghpa.gov

PETITION TO INTERVENE

4. Eligibility to intervene in Commission proceedings is governed by the Commission's regulations found at 52 Pa. Code § 5.72. The Commission's regulations provide that in order to have the ability to intervene, a party must have “a right or interest” sufficient to warrant intervention, which includes an interest that may be directly affected by the proceeding and which is not being adequately represented by existing participants, and where the petitioner may be bound by the actions of the Commission or where the right or interest is otherwise in the public interest. *Id.*

5. The City is a PWSA ratepayer. Moreover, the City established PWSA and currently owns PWSA's water and wastewater infrastructure. The City established PWSA in 1984 to assume responsibility for operating the City's water supply and distribution and wastewater collection systems (the "Water and Sewer System").

6. PWSA operates and maintains the City's Water and Sewer System, which provides these services to a majority of the residential, business, educational facilities, and other types of structures within the City's corporate limits. Within the City, there are 80,569 water and sewer accounts and 30,728 sewer-only accounts. Millvale, a municipal customer of PWSA services, has 1,678 water-only accounts.

7. Pursuant to a lease and management agreement dated March 29, 1984 (the "1984 Agreement") between PWSA and the City, the City leased its Water and Sewer System to PWSA, with the City continuing to provide services necessary to operate the system, acting as an agent of PWSA. In 1995, the parties terminated the 1984 Lease Agreement and entered into a 1995 Capital Lease Agreement dated July 15, 1995, which remains in effect today.

8. PWSA and the City also entered into a cooperation agreement with an effective date of January 1, 1995 (the "1995 Cooperation Agreement") and later amended (the "First Amendment") on March 21, 2011. The 1995 Cooperation Agreement, as amended, remained in effect until October 3, 2019, when the PWSA terminated it because the parties negotiated a new cooperation agreement, the 2019 Cooperation Agreement. The 2019 Cooperation Agreement is effective October 3, 2019. 16. The terms of the 2019 Cooperation Agreement are significant because it recognizes transitions in the relationship between two discrete governmental entities, allowing each party the opportunity to implement these significant changes in a reasonable period

of time to benefit the taxpayers and ratepayers, respectively, many of whom are the same residents of the City.

a. It confirms the City’s commitment to change a thirty-six (36) year relationship over the course of five (5) years, which coincides with the time remaining on the 1995 Capital Lease Agreement, which expires on September 1, 2025. Following the expiration of the 1995 Capital Lease Agreement, the PWSA may then exercise the option to purchase the Water and Sewer System from the City for one dollar (\$1.00).

b. It recognizes the PWSA, an independent municipal authority, is transitioning from a municipal authority that is not subject to the PUC’s authority and oversight to a municipal authority that is subject to the PUC’s authority and oversight. It is assuming an identity that is more akin to a traditional public utility rather than an independent authority.

c. It identifies the City, the current owner of the water and sewer system, is transitioning from a Water and Sewer System owner—allowing it an agreed upon access to its own water and sewer system—to a customer, paying for its access to water and sewer services.

9. The City negotiated the 2019 Cooperation Agreement, in part, to balance the significant change, understanding each party must take specific positions: one to protect its customers and the other to protect its residents.

10. The 2019 Cooperation Agreement has the force and effect of law. Act of July 23, 2020, P.L. 677, No. 70. The 2019 Cooperation Agreement has specific provisions regarding rates the City will pay to PWSA, which rates are implicated in these proceedings.

11. Therefore, the City is eligible to intervene as of right and because its interest in these proceedings are of such a nature that its intervention is necessary and appropriate to the administration of the statute under which the proceeding is brought.” 52 Pa. Code § 5.72(a).

12. Further, the City has identified an interest that will be directly affected by these proceedings, and there is no other party but the City that can adequately represent its interests

because the Commission intends to bind the City with any decision that it enters in these proceedings. 52 Pa. Code. § 5.72(a)(2).

13. Pursuant to the City's current position and until such point in time where the PWSA assumes full ownership of the Water and Sewer System, they each receive a certain grant of general immunity to claims and lawsuits. See the Political Subdivision Tort Claims Act, 42 Pa. C.S. § 8541 et seq.

14. However, this general grant of immunity is subject to limited exceptions that include claims and suits arising from alleged dangerous conditions of the facilities of sewer and water owned by the local agency and located within rights-of-way. See 42 Pa. C.S. § 8542(b)(5).

15. The City believes its exposure to liability and damages is germane to the overall discussions because statutory and decisional law states that neither the City nor the PWSA can expand or restrict the legislative grant of immunity or the exceptions to the general grant of immunity in a manner that is inconsistent with the Tort Claims Act.

16. As municipal entities, the law limits the ability of the City and the PWSA to shift exposure (liability and damages) in the same manner as a private entity, and neither statutory law nor decisional law empower the PUC to alter or amend the Tort Claims Act. 25. Therefore, the City's continuing ownership exposes it to ongoing claims even though the PWSA now operates and maintains the Water and Sewer System pursuant to the edicts announced by the PUC.

17. Finally, the City is entitled as a matter of law to intervene because it will suffer immediate and irreparable harm if the PUC denies this petition to intervene.

18. For the reasons stated above, The City's intervention in this matter meets the intervention standards of 52 Pa. Code § 5.72, and is otherwise in the public interest. Accordingly,

The City requests that this intervention be granted and that it be allowed full party status in this matter.

WHEREFORE, The City of Pittsburgh respectfully requests that this petition be granted and that the Pennsylvania Public Utility Commission grant it party status in the above-captioned matter.

Respectfully submitted,

/s/ Whitney E. Snyder

Thomas J. Sniscak, Attorney I.D. No. 33891
Kevin J. McKeon, Attorney I.D. No. 30428
Whitney E. Snyder, Attorney I.D. No. 316625
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
(717) 236-1300
kjmckeon@hmslegal.com
tjsniscak@hmslegal.com
wesnyder@hmslegal.com

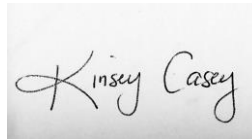
/s/ Yvonne S. Hilton

Yvonne S. Hilton, Attorney ID No. 74582
John F. Doherty, Attorney ID No. 56418
Lawrence H. Baumiller, Attorney ID No. 200387
City of Pittsburgh Department of Law
City-County Building, Suite 313
414 Grant Street
Pittsburgh, PA 15219
yvonne.hilton@pittsburghpa.gov
john.doherty@pittsburghpa.gov
lawrence.baumiller@pittsburghpa.gov
Attorneys for The City of Pittsburgh

DATED: May 28, 2021

VERIFICATION

I, Kinsey Casey, Chief Operating and Administrative Office, on behalf of City of Pittsburgh, hereby state that the facts set forth in the foregoing statement and its attachments are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing in this matter. This verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

A rectangular box containing a handwritten signature in cursive script that reads "Kinsey Casey".

Kinsey Casey
Chief Operating and Administrative Officer

DATED: May 27, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the persons listed below in accordance with the requirements of § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL ONLY

Erin K. Fure, Esq.
Teresa Reed Wagner
Office of Small Business Advocate
Forum Place Building
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
efure@pa.gov
tereswagne@pa.gov

Christine Maloni Hoover, Esq.
Erin L. Gannon, Esq.
Lauren E. Guerra, Esq.
Santo G. Spataro, Esq.
Office of Consumer Advocate
555 Walnut St., 5th Fl.,
Forum Place
Harrisburg, PA 17101-1923
choover@paoca.org
egannon@paoca.org
lguerra@paoca.org
sspataro@paoca.org

Gina L. Miller, Esq.
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North St., 2nd Floor West
Harrisburg, PA 17120
ginmiller@pa.gov

Ria Pereira, Esq.
Elizabeth R. Marx, Esq.
John W. Sweet, Esq.
Lauren N. Berman, Esq.
The Pennsylvania Utility Law Project
118 Locust St.
Harrisburg, PA 17101
pulp@palegalaid.net

Deanne M. O'Dell, Esq.
Daniel Clearfield, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street 8th Floor
Harrisburg, PA 17101
dodell@eckertseamans.com
dclearfield@eckertseamans.com

Brian Kalcic
Excel Consulting
225 S. Meramec Avenue, Suite 720T
St. Louis, MO 63105
Excel.consulting@sbcglobal.net

Roger D. Colton
Fisher, Sheehan & Colton
34 Warwick Road
Belmont, MA 02478
ocapwsa2021@paoca.org

Barbara R. Alexander
Barbara Alexander Consulting, LLC
83 Wedgewood Drive
Winthrop, ME 04364
ocapwsa2021@paoca.org

Consultant for OCA

Consultant for OCA

Scott J. Rubin
333 Oak Lane
Bloomsburg, PA 17815
ocapwsa2021@paoca.org

Consultant for OCA

Terry L. Fought
780 Cardinal Drive
Harrisburg, PA 17111
ocapwsa2021@paoca.org

Consultant for OCA

/s/ Whitney E. Snyder

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder

DATED: May 28, 2021