

Deanne M. O'Dell
717.255.3744
dodell@eckertseamans.com

September 8, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 2 (Chapters 14 and 56), Docket Nos. M-2018-2640802 and M-2018-2640803

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Pittsburgh Water and Sewer Authority's ("PWSA") Prehearing Memorandum in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell, Esq.

DMO/lww

Enclosure

cc: Hon. Eranda Vero w/enc.
Hon. Gail M. Chiodo w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PWSA's Prehearing Memorandum upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

Sharon Webb, Esq.
Erin K. Fure, Esq.
Forum Place Building
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
swebb@pa.gov
efure@pa.gov

Christine Maloni Hoover, Esq.
Erin L. Gannon, Esq.
Lauren E. Guerra, 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

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

Elizabeth R. Marx, Esq.
John W. Sweet, Esq.
The Pennsylvania Utility Law Project
118 Locust St.
Harrisburg, PA 17101
pulp@pautilitylawproject.org

Susan Simms Marsh, Esq.
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
Susan.marsh@amwater.com

Michael A. Gruin, Esq.
Stevens & Lee
17 North Second St., 16th Fl.
Harrisburg, PA 17101
mag@stevenslee.com

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

Peter J. DeMarco, Esquire
Natural Resources Defense Council
1152 15th Street, NW, Ste. 300
Washington, DC 20005
pdemarco@nrdc.org

Michelle Nacarati Chapkis
Mayor's Blue Ribbon Panel on Restructuring
the PWSA Care of Women for a Healthy
Environment
5877 Commerce St.
Pittsburgh, PA 15206
michelle@womenforahealthyenvironment.org



Dated: September 8, 2021

Deanne M. O'Dell, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 2 (Chapters 14 and 56) : : Docket Nos. M-2018-2640802 (Water) M-2018-2640803 (Wastewater)

**PREHEARING MEMORANDUM OF
THE PITTSBURGH WATER AND SEWER AUTHORITY**

Pursuant to 52 Pa. Code §§ 5.221-5.224 and the Prehearing Conference Order issued on August 26, 2021 by Administrative Law Judges Eranda Vero and Gail M. Chiodo (“ALJs”), The Pittsburgh Water and Sewer Authority (“PWSA” or the “Authority”) submits this Prehearing Memorandum.

I. PROCEDURAL HISTORY

Effective April 1, 2018, PWSA became subject to the Public Utility Code with the exception of Chapters 11 (relating to certificates of public convenience) and 21 (relating to relations with affiliated interested). *See* 66 Pa.C.S. § 3201 *et seq.* (“Chapter 32”). The transition process established by Chapter 32 included a requirement that PWSA file: (1) a compliance plan to bring its existing information technology, accounting, billing, collection and other operating systems and procedures into compliance with Commission requirements; and, (2) a long-term infrastructure improvement plan (“LTIIIP”) by September 28, 2018. 66 Pa.C.S. § 3204(b).

The Commission initiated this proceeding pursuant to Tentative Implementation Order on January 18, 2018 for the purpose of proposing methods by which the Commission and affected entities may carry out the requirements of Chapter 32.¹ The Final Implementation Order was

¹ *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, Docket No. M-2018-2640802 (water) and M-2018-2640803 (wastewater), Tentative Implementation Order entered January 18, 2018.

entered on March 15, 2018.² As directed by the Commission, PWSA filed its Compliance Plan and its LTIP on September 28, 2018.

Two days prior to PWSA's filing of its Compliance Plan and LTIP, on September 26, 2018, the Commission issued a Secretarial Letter outlining the procedure for Commission review of PWSA's Compliance Plan and LTIP which included: (1) publication of notice of PWSA's filing; (2) invitation for interested stakeholders to file comments no later than 20 days after publication of the notice; and (3) an assignment of the matter to the Office of Administrative Law Judge ("OALJ") within 45 days with an initial report from technical staff.³ The *September 26, 2018 Secretarial Letter* also provided that the OALJ was to prepare a recommended decision no later than eight months from the date on which the matter is assigned and the Commission would issue appropriate orders on the filings no later than November 30, 2019.

On November 28, 2018, the Commission issued a Secretarial Letter which: (1) referred PWSA's September 28, 2018 Compliance Plan filing to the Office of Administrative Law Judge; and (2) established two stages of review for PWSA's Compliance Plan.⁴

- The topics to be addressed in Stage 1 were "urgent infrastructure remediation and improvement and the revenue and financing requirements of maintaining service that supports public health and safety."⁵
- The issues reserved for Stage 2 were: (1) PWSA's compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations; and (2) development of a stormwater tariff.

² *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, Docket No. M-2018-2640802 (water) and M-2018-2640803 (wastewater), Final Implementation Order entered March 15, 2018.

³ *Procedure for Commission Review of the September 28, 2018 Compliance Plan and LTIP Filings of The Pittsburgh Water and Sewer Authority*, Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater), dated September 26, 2018 ("September 26, 2018 Secretarial Letter").

⁴ *Assignment of the Pittsburgh Water and Sewer Authority Compliance Plan to the Office of Administrative Law Judge*, Docket No. M-2018-2640802 (water) and M-2018-2640803 (wastewater), dated November 28, 2018 Corrected ("November 28, 2018 Secretarial Letter").

⁵ *Id.* at 3.

Litigation related to Stage 2 was to begin after issuance of a final Commission Order in Stage 1, though Commission staff was directed to hold workshops related to Stage 2 issues in 2019.

On September 13, 2019, a Joint Petition for Partial Settlement regarding the Stage 1 issues was filed (*Stage 1 Partial Settlement*) and a Recommended Decision was issued October 29, 2019 adjudicating the partial settlement as well as the contested issues.

On January 24, 2020, the Commission issued a Secretarial Letter (“*January 2020 Secretarial Letter*”) which postponed its consideration and ruling on Stage 1 to no later than March 31, 2020. The *January 2020 Secretarial Letter* also provided future direction regarding the Stage 2 Proceeding including the direction to PWSA to file its Stage 2 Compliance Plan within 60 days after entry of a final unappealable order on Stage 1.

On March 26, 2020, the Commission entered the first of three orders regarding the Compliance Plan Stage 1 proceeding which: (1) approved the *Stage 1 Partial Settlement*; (2) made two modifications related to PWSA’s lead service line replacement policy related to partial lead service line replacements; and (3) adjudicated the issues that were reserved for litigation.⁶ The third Commission order regarding the Compliance Plan Stage 1 proceeding was entered on February 4, 2021 (“*Stage 1 February 4, 2021 Order*”). The *Stage 1 February 4, 2021 Order*: (1) adjudicated PWSA’s Compliance Proposal regarding lead line remediation issues; and (2) reiterated the direction of the *January 2020 Secretarial Letter* regarding the initiation of the Stage 2 proceeding.⁷ PWSA subsequently received an extension from April 5, 2021 to April 9, 2021 to file its Stage 2 documents as directed by Ordering Paragraph 3 of the *Stage 1 February 4, 2021 Order*.

⁶ *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1*, Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater), Opinion and Order entered March 26, 2020 (“*Stage 1 March 26, 2020 Order*”).

⁷ *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1*, Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater), Opinion and Order entered February 4, 2021 (“*Stage 1 February 4, 2021 Order*”).

Accordingly, on April 9, 2021, PWSA filed two separate Stage 2 Compliance Plan documents: (1) Stage 2 Compliance Plan: Chapters 14 & 56, DSLPA and Collections; and, (2) Stage 2 Compliance Plan: Stormwater. PWSA also filed a Petition for Amendment of the Commission's February 4, 2021 Final Order Regarding Procedural Process for Customer Service and Collections Issues.

By Opinion and Order entered May 20, 2021, the Commission granted, in part, PWSA's Petition for Amendment and directed, *inter alia*, that the matter would be assigned to the OALJ no later than August 9, 2021 (120 days after PWSA had filed its Stage 2 Compliance Plan) with direction that the OALJ issue a recommended decision no later than May 25, 2022.⁸

On May 28, 2021 a Secretarial Letter was issued scheduling two additional workshops regarding PWSA's Stage 2 Compliance Plan: Chapters 14 & 56, DSLPA and Collections. The workshops were held as scheduled on June 17, 2021 and June 25, 2021. PWSA provided follow-up written information as requested by BCS staff and the parties during the workshops.

On August 5, 2021, the Commission issued a Secretarial Letter assigning the Stage 2 Compliance Plan: Chapters 14 & 56, DSLPA and Collections to the OALJ. Included with the Secretarial Letter was the Report and Directed Questions Stage 2 dated August 5, 2021 focused on customer service issues (not stormwater).

A Notice of Pre-Hearing Conference was issued August 25, 2021 scheduling the prehearing conference for September 9, 2021. A Prehearing Conference Order dated August 26, 2021 directed that Prehearing Conference Memorandum be filed prior to 4:00 PM on September 8, 2021.

⁸ In the same order, the Commission granted PWSA's Motion to Hold in Abeyance the Stage 2 Stormwater Compliance Plan filed by PWSA on April 13, 2021 pending resolution of PWSA's 2021 base rate case at docket number R-2021-3024779. A Joint Petition for Settlement of the base rate case was filed on September 7, 2021 and is pending. Therefore, this proceeding does not include stormwater compliance plan issues.

II. REPRESENTATION

PWSA's attorneys in this matter are:

Deanne O'Dell, Esquire
Daniel Clearfield, Esquire
Karen O. Moury, Esquire
Lauren M. Burge, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
dodell@eckertseamans.com
dclearfield@eckertseamans.com
kmoury@eckertseamans.com
lburge@eckertseamans.com

Deanne O'Dell is the designated primary speaker for purposes of the prehearing conference. PWSA prefers that documents be served electronically to the above email addresses and agrees to receive service of documents electronically in this proceeding. To the extent that materials are not available electronically, PWSA requests that only one hard copy of documents, if any, be served upon Deanne O'Dell at the above mailing address.

III. PRESENTLY IDENTIFIED ISSUES

The scope of the issues in this Stage 2 proceeding were clarified in a May 15, 2019 Secretarial Letter⁹ from the Commission which approved a previously filed Expedited Motion for Extension of Commission-Created Deadlines (“*Joint Motion for Extension Stage I*”).¹⁰ More specifically, the following issues were identified as part of the Stage 2 process:

- a) The language, format and method of providing suspension and termination notice pursuant to Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations;

⁹ *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage I*, Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater), Secretarial Letter dated May 15, 2019 at 3.

¹⁰ *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage I*, Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater), Expedited Motion for Extension of Commission-Created Deadlines filed May 13, 2019 at 8-11 (“*Joint Motion for Extension Stage I*”).

- b) PWSA's compliance with the Discontinuance of Service to Leased Premises Act ("DSLPA"), 66 Pa.C.S. §§ 1521-1533; and
- c) PWSA's plan for collections (to include strategies to reduce overall uncollectibles to ensure collections practices for residential customers are consistent with legal requirements).

PWSA's April 9, 2021 Stage 2 Compliance Plan: Chapters 14 & 56, DSLPA and Collections along with the supporting Appendices, comprehensively presents all requested information about its compliance with the identified requirements. The Appendices present PWSA's customer notices regarding non-access to the meter, non-payment for services, other customer communications and various forms processes and information as requested over the years and in various proceedings. In addition, during the two customer service workshops additional information was provided by PWSA at the request of Commission staff and the parties. PWSA anticipates that this proceeding will be used to review all of this information and determine whether it is compliant, and, if not, how to conform the information and processes to Public Utility Code and Commission requirements.

By way of additional guidance, the Commission's August 5, 2021 Report and Direct Questions Stage 2 offers 20 directed questions from the Bureau of Consumer Services ("BCS"), the answers to which are also issues expected to be addressed in this proceeding.

IV. WITNESSES

PWSA is still in the process of identifying its witnesses but, at a minimum, anticipates that it will present the testimony of Julie A. Quigley, Director of Customer Service. All of the issues to be addressed in this proceeding are expected to be within Ms. Quigley's area of expertise and knowledge.

PWSA reserves its right to add additional witnesses or change the identity of its witnesses at any time upon appropriate notice to the Presiding Officers and the parties.

V. PROCEDURAL SCHEDULE

PWSA proposes the following litigation schedule wherein PWSA would serve Direct Testimony focused on responding to the BCS Report and Directed Questions. Other parties would then provide direct testimony regarding PWSA’s Compliance Plan and/or the BCS Directed Questions. Written Rebuttal and Surrebuttal testimony would provide an opportunity for parties to respond to other testimony. PWSA would serve written Rejoinder Testimony (or an outline) prior to evidentiary hearings, briefing and, ultimately a recommended decision.

<u>Event</u>	<u>Proposal</u>
Prehearing Conference	September 9, 2021
PWSA Direct Testimony	Tuesday, November 30, 2021
Service of written direct testimony of all other parties	Tuesday, January 18, 2022
Service of written rebuttal testimony	Thursday, February 17, 2022
Service of written surrebuttal testimony	Thursday, March 3, 2022
Rejoinder Outline or Testimony	Monday, March 7, 2022
Witness matrix listing the parties intending to cross-examine each witness and the extent of any cross-examination	Wednesday, March 9, 2022
<u>Technical evidentiary hearings</u>	<u>Thursday, March 10, 2022 and Friday, March 11, 2022</u>
Filing and service of main briefs	Friday, April 8, 2022
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	Friday, April 22, 2022
<i>ALJ RD (due date)</i>	<i>May 25, 2022</i>

Under the proposed schedule, all dates are in-hand delivery, and electronic mail for receipt and distribution will satisfy in-hand service dates.

VI. DISCOVERY

While it would not appear necessary to adopt rules to shorten discovery response times, PWSA is willing to discuss any proposed discovery modifications and encourages the use of informal discovery to expedite the discovery process. PWSA has established a cloud-based, secure site for the assistance of the parties in handling discovery. Discovery responses including attachments will be available at ESCM Share File site. For a party to receive access, please contact Deanne O'Dell (dodell@eckertseamans.com) or 717-255-3744 and provide the name and email address of the person seeking access.

VII. SETTLEMENT

PWSA is willing to discuss the settlement of any or all aspects of this proceeding.

Respectfully submitted,



Deanne M. O'Dell, Esq.
(PA Attorney ID No. 80614)
Daniel Clearfield, Esq.
(PA Attorney ID No. 26183)
Karen O. Moury, Esq.
(PA Attorney ID No. 36879)
Lauren M. Burge, Esq.
(PA Attorney ID No. 311570)
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
717.237.6000
717.237.6019 (fax)
dclearfield@eckertseamans.com
dodell@eckertseamans.com
kmoury@eckertseamans.com
lburge@eckertseamans.com
Counsel for
The Pittsburgh Water and Sewer Authority

Dated: September 8, 2021