

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the Public	:	M-2018-2640802
Utility Code Regarding Pittsburgh Water and	:	M-2018-2640803
Sewer Authority – Stage 2	:	

PREHEARING ORDER

By Order entered May 20, 2021, in the above captioned matters, the Commission ordered as follows,

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, 2022.¹

Pittsburgh Water and Sewer Authority (PWSA) filed its revised Stormwater Compliance Plan on January 20, 2022.

On February 3, 2022, PWSA filed an “Unopposed Petition of the Pittsburgh Water and Sewer Authority to Separate Stormwater Issues from Other Stage 2 Compliance Plan Issues.”

¹ *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1*, Docket Nos. M-2018-2640802, *et al.* at Ordering Paragraph No. 6 (Order entered May 20, 2021).

On February 10, 2022, we asked the parties to prepare a litigation schedule for PWSA's Stormwater Compliance Plan and provide it to us by February 24, 2022.

On February 22, 2022, the Commission's Bureau of Technical Utility Services (TUS) filed its second report and directed questions.

By Secretarial Letter dated February 22, 2022, the review of PWSA's Revised Stormwater Compliance Plan was assigned from TUS to the Office of Administrative Law Judge.

The parties in this matter submitted a proposed litigation schedule and discovery modifications.

Upon careful review, we approve the proposed litigation schedule and discovery modifications.

THEREFORE,

IT IS ORDERED:

1. By agreement of the parties, the following litigation schedule is adopted:

DATE	EVENT
March 14, 2022	Direct Testimony of all parties and PWSA's response to TUS' Directed Directions – attached
March 25, 2022	Rebuttal Testimony of all parties and Supplemental Direct Testimony of all parties
March 30, 2022	Oral Rejoinder of all parties and Evidentiary Hearing
April 13, 2022	Main Briefs Due
April 20, 2022	Reply Briefs Due
May 25, 2022	Recommended Decision

2. By agreement of the parties, the following modifications to discovery are adopted:

A. Answers to written interrogatories to be served in-hand within seven (7) calendar days of service of the interrogatories. However, parties will make best efforts to provide responses within five (5) calendar days of service.

B. Oral objections to propounding party within two (2) days of service of response; written objections to propounding party within three (3) days of service of response.

C. Requests for admission be deemed admitted unless answered within five (5) calendar days or objected to within two (2) days of service.

D. Answers to on-the-record data requests to be served in-hand within five (5) calendar days of the request.

E. Any discovery served after 12:00 noon on a Friday or the day before a holiday will be deemed to have been served on the following business day for purposes of tracking due dates.

3. That the above litigation schedule may be revisited following the Commission's ruling on the "Unopposed Petition of the Pittsburgh Water and Sewer Authority to Separate Stormwater Issues from Other Stage 2 Compliance Plan Issues," which was filed by PWSA on February 3, 2022.

Dated: March 2, 2022

/s/
Eranda Vero
Administrative Law Judge

/s/
Gail M. Chiodo
Administrative Law Judge

**M-2018-2640802 M-2018-2640803 IMPLEMENTATION OF CHAPTER 32 OF THE
PUBLIC UTILITY CODE REGARDING PITTSBURGH WATER AND SEWER
AUTHORITY - STAGE 1**

Updated on 3-2-22

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ATTACHMENT

**Pennsylvania Public Utility Commission
Technical Staff Report
and Directed Questions
Stage 2, Set 2**

Implementation of Chapter 32 of the Public Utility
Code Regarding Pittsburgh Water and Sewer
Authority – Stage 2 – Stormwater

Docket No. M-2018-2640802 (Water)

Docket No. M-2018-2640803 (Wastewater)

February 22, 2022



Background

By Secretarial Letter dated September 26, 2018, at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater) and the various proceedings that followed, the Commission established a procedure to refer the Pittsburgh Water and Sewer Authority (PWSA) Stormwater Stage 2 Compliance Plan (Stormwater CP) to the Office of Administrative Law Judge (OALJ) for hearings.

In the Order entered May 20, 2021 (May 2021 Order), the Commission directed PWSA to file a revised stormwater compliance plan within 30 days of 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 (2021 Rate Case), but no later than January 31, 2022.¹ The Commission also directed the Bureau of Technical Utility Services (TUS) to draft a second report and directed questions identifying any Stage 2 Compliance Plan issues pertaining to stormwater compliance to be referred and assigned to the OALJ within 30 days of the filing of PWSA's revised stormwater compliance plan.

On January 20, 2022, PWSA filed its revised Stormwater Stage 2 Compliance Plan (Revised Stormwater CP), at Docket Nos. M-2018-2640802 and M-2018-2640803. PWSA's Revised Stormwater CP includes responses to TUS's Technical Staff Report and Directed Questions - Stage 2, Set 1 (Stage 2, Set 1 Report) as Appendix 1.

Consistent with the Commission's established procedure to bring PWSA into compliance with applicable Commission requirements, and pursuant to the May 2021 Order, TUS refers this proceeding and the Technical Staff Report and Directed Questions - Stage 2, Set 2 (Stage 2, Set 2 Report) to the OALJ. The purpose of the Stage 2, Set 2 Report is to assist PWSA and interested parties in developing an adequate record for the Commission to approve a Stormwater CP that is consistent with the goals of 66 Pa.C.S. § 3204(b). Namely, Section 3204(b) directs the CP to work to:

[B]ring [PWSA's] existing information technology, accounting, billing, collection and other operating systems and procedures into compliance with the requirements applicable to jurisdictional water and wastewater utilities under this title and applicable rules, regulations and orders of the commission . . .

66 Pa.C.S. § 3204(b). In addition, Section 3204(c) provides direction on how the Commission is to conduct its review of the CP. Section 3204(c) provides:

The commission shall review the compliance plan filed by [PWSA] under subsection (b) and may order [PWSA] to file a new or revised compliance

¹ See *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1*, Docket Nos. M-2018-2640802, *et al.* at Ordering Paragraph No. 6 (Order entered May 20, 2021).

plan if the compliance plan fails to adequately ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service.

66 Pa.C.S. § 3204(c). The Stage 2, Set 2 Report works to ensure that areas addressed in Section 3204(b) are subject to the review mandated by Section 3204(c). Also, the matters addressed in the Stage 2, Set 2 Report are tentative given Commission authority to cause PWSA to reiterate its CP as necessary to achieve compliance with Section 3204(c). The Stormwater CP generally follows the organizational structure of Commission regulations, and the report follows suit. Because of this, parties should not assign relative importance or priority based on whether issues appear earlier or later in this report. To the extent that any statutes, regulations, or Orders are not addressed herein, in whole or in part, the parties are not barred from further discussion on such topics. Further, any directed questions in this Stage 2, Set 2 Report are in addition to the directed questions previously issued in the Stage 2, Set 1 Report at this docket.

As indicated above, PWSA and parties are to address the questions and issues in the Stage 2 Set 2 Report to the extent that each believes appropriate and necessary to obtain a CP suitable for approval under 66 Pa.C.S. § 3204(b).

TUS Directed Questions

52 Pa. Code § 53.53 – Information to be furnished with proposed general rate increase filings in excess of \$1 million

Certain PWSA responses to filing requirements included with PWSA's 2021 Rate Case do not appear to include separate and distinct data for each operating division (*i.e.*, water, wastewater, and stormwater). For example, PWSA provided a consolidated income statement, rather than separate and distinct income statements for each operating division, in response to Filing Requirements I.2 & I.3. Parties should discuss:

- Whether PWSA should provide separate and distinct data for each operating division.
- The potential steps and associated time frame for Filing Requirement I.3.

Additionally, certain filing requirements include terms like "consumption," "usage," "gallons," "water," and "wastewater." Parties should discuss:

- Whether such terms are applicable for stormwater purposes and whether such terms provide necessary data.
- Whether PWSA's responses should include similar stormwater billing units (*i.e.*, impervious area) or other data and/or metrics where the terms "consumption," "usage," and "gallons" are used.

52 Pa. Code §§ 65.8 – Meters & 65.14 - Measurement

In the Revised Stormwater CP, Section 6, Part C of Appendix 1 at Page 6, PWSA indicated that, throughout the impervious area data development process, there was no “allowable error.” Further, PWSA indicated that the minimum mapping unit for all features is 100 square feet, or less, if the feature is visible in the imagery and could be appropriately collected. It appears, based upon the minimum mapping unit, that features less than 100 square feet or not visible may have reasonably induced errors for certain customers. Parties should discuss:

- The registration error tolerance of no more than 2% for water meters established by the Commission at 52 Pa. Code § 65.8.
- The level, amount, or percentage, if any, at which a reasonable error tolerance should be established for Geographical Information Systems (GIS) based stormwater mapping of impervious areas.
- The utilization of equivalent residential units (ERUs) in PWSA’s Storm Water Tariff Tiers based upon impervious area measured in square feet.

Additionally, in Section 6, Part E of Appendix 1, PWSA indicated that it will update stormwater billing source data in response to customer inquiries, “event triggers” indicating new or changed developments, and “as needed” following new releases of aerial imagery. Parties should discuss:

- The tariff language for billing unit adjustments included in Pages 38-39 of PWSA’s stormwater tariff.
- Sources that PWSA may or must use to determine stormwater billing unit data, and whether PWSA should be permitted to use any sources or change between sources at its discretion, even when sources have not been identified in a rate case as one of PWSA’s stormwater billing unit data sources.
- If mapping or data sources are permitted to be changed between rate cases, thereby modifying the underlying GIS/meter source material, whether there should be a customer notification process describing how the mapping changeover may impact customer billing ERUs and whether PWSA should be required to retain the previous mapping and data sets to resolve billing disputes for a set time period.
- How to handle billing unit data discrepancies where there has not been an apparent change on the ground, and what types of discrepancies would trigger a modification of billing unit data. For example, if a residential customer is assigned 2,711 square feet of impervious area based on existing aerial imagery,

and a new release of aerial imagery indicates that same customer should be assigned 2,708 square feet, under PWSA's effective stormwater tariff, that customer would be billed a Tier 3 service charge under existing imagery and a Tier 2 service charge under updated imagery. In this regard, parties should also discuss:

- Whether the difference of three-square feet, or approximately 0.1%, should result in a change in what the customer is billed, and whether the customer should be entitled to a refund.
- Whether this changes if the discrepancy is larger (*i.e.*, if the discrepancy is above a certain number or percentage difference between existing and updated values, and which has a material impact to the amount billed) or if existing data and updated data were based on different data sources (*i.e.*, a development permit vs. aerial imagery, or 2020 aerial imagery vs. 2025 aerial imagery, etc.).

52 Pa. Code § 65.16 - System of Accounts

In the Revised Stormwater CP, Section 7, Part A of Appendix 1 at Page 8, PWSA indicated green infrastructure projects are considered as a system and that costs associated with installing the system are considered as a whole. PWSA further stated that most green infrastructure is not owned by PWSA as it is installed on private property and improvements on private property will be expensed. Parties should discuss:

- Whether PWSA should record costs associated with green infrastructure projects as a whole or break down the system by major plant categories or subaccounts that are recorded and depreciated separately.
- PWSA's capitalization policy for stormwater improvements, including whether PWSA should use the \$750 capitalization threshold for water and wastewater utilities under the uniform system of accounts for Class A Water and Wastewater Utilities.
- Whether PWSA should expense improvements in one year or expense improvements through amortization of a deferred asset over a reasonable time period.

52 Pa. Code § 65.19 Filing of Annual Financial Reports

In the Revised Stormwater CP, Section 9, Part B of Appendix 1 at Page 13, PWSA indicated that, for stormwater financial reporting, it proposes to use the approved annual report form for municipal wastewater utilities without any changes. Parties should discuss:

- Whether PWSA should use the approved annual report for municipal wastewater utilities for an interim period before switching to the approved annual report form for Class A wastewater utilities in the future and the appropriate timeline for this transition.

52 Pa. Code § 65.22 - Customer Advance Financing, Refunds and Facilities on Private Property

In the Revised Stormwater CP, Section 7, Part B of Appendix 1 at Page 8, PWSA indicated that most green infrastructure is not owned by PWSA as it is installed on private property and that improvements on private property will be expensed. Parties should discuss:

- The requirements of 52 Pa. Code § 65.22(c) and whether this provision applies to green infrastructure installed on private property.
- PWSA’s method of formally dedicating assets installed on private property to the property owner.
- Whether PWSA’s method of formal dedication ensures assets installed on private property will be maintained to a working order, and whether an operating, inspection and maintenance, or similar agreement for such facilities that runs with the property should be created.
- Whether PWSA should expense improvements on private property.

52 Pa. Code § 73.3 - Annual Depreciation Reports

In the Revised Stormwater CP, Section 13 of Appendix 1 at Page 18, PWSA indicated that, for green infrastructure systems, the pipes or underground storage are the primary costs and the costs of trees and shrubs are ancillary and grouped with the pipe as part of the system. The costs of the pipe are then depreciated in the same manner as for water or wastewater assets. Parties should discuss:

- Whether PWSA should group disparate assets with different service lives together and then apply the same depreciation to that group.

PWSA’s Relationship with the City of Pittsburgh

In the Revised Stormwater CP, Section 19, Part G of Appendix 1 at Page 23, PWSA indicated that PWSA is not an “agent” of the City. On Pages 21 to 22 of PWSA Statement No. 7 at Docket No. R-2021-3024779, PWSA stated, “PWSA has taken responsibility for maintaining approximately 25,000 stormwater catch basins and inlets.

[...] Right now, PWSA acts as an agent of the [City] to perform maintenance of all publicly owned catch basins.”

Additionally, in Revised Stormwater CP at Section 19, Part D of Appendix 1, Pages 22 to 23, PWSA indicated that: (1) PWSA is not operating stormwater infrastructure without a written service agreement or lease, except in certain instances; (2) if PWSA performs any work or services on “private” stormwater infrastructure, PWSA will charge the owner for such services; and (3) that charging the City for PWSA services provided is set forth in the City/PWSA Cooperation Agreement. Parties should discuss:

- Whether the City/PWSA Cooperation Agreement and other agreements between the City and PWSA adequately address non-tariff stormwater services and costs, facility ownership, and facility operational control. Parties should distinguish between stormwater facilities that are part of PWSA’s combined sewer system and stormwater facilities that are part of the City’s and/or PWSA’s MS4.

Finally, in Revised Stormwater CP, Section 19, Part C of Appendix 1 at Page 22, PWSA indicated that, to the extent PWSA provides services to the City, such as sampling the City’s outfalls or maintaining City-owned catch basins, PWSA will charge the City for those services pursuant to the Cooperation Agreement. Parties should discuss:

- Whether any current non-tariff stormwater services and costs, including sampling costs for the City and costs for PWSA to operate and replace City-owned stormwater infrastructure that serves the public, should be incorporated into PWSA’s revenue requirement and charged as a component of PWSA’s base stormwater rates.

Bulk Stormwater Agreements

In the Revised Stormwater CP, Section 20 of Appendix 1 at Page 25, PWSA indicated that it did not propose any charges for contributing municipality service as part of the Stormwater Rate Case for two major reasons. One reason is that stormwater from these municipalities flows into a combined sewer system that the City of Pittsburgh developed decades ago. Parties should discuss:

- Whether PWSA should enter into Bulk Service Agreements with contributing municipalities for the conveyance and treatment of these flows or maintain the practice of charging PWSA’s wastewater and stormwater ratepayers located in the City for these costs.
- Whether PWSA should develop a stormwater cost of service study for contributing municipalities within PWSA’s sewershed areas to be filed prior to its next stormwater base rate case.

- Whether any existing arrangements between PWSA and contributing municipalities impact PWSA's ability to earn a reasonable amount of funding for stormwater operations or create a burden on PWSA customers located in the City.