

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALLEGHENY CEMETERY,
a Pennsylvania nonprofit,

THE HOMEWOOD CEMETERY,
a Pennsylvania nonprofit, and

SMITHFIELD CEMETERY,
a Pennsylvania nonprofit.

PUC Docket No. C-2022-3036595

Complainants,

vs.

PITTSBURGH WATER & SEWER AUTHORITY,
Respondent.

JOINT MOTION TO STAY PROCEEDINGS

AND NOW, comes the Complainants, ALLEGHENY CEMETERY, a Pennsylvania nonprofit (“Allegheny Cemetery”), THE HOMEWOOD CEMETERY, a Pennsylvania nonprofit (“Homewood Cemetery”), and SMITHFIELD CEMETERY, a Pennsylvania nonprofit, a/k/a SMITHFIELD EAST END CEMETERY CORPORATION, a Pennsylvania Non-Profit Corporation (“Smithfield Cemetery”) (collectively referred to as “Complainants”), by and through its attorneys, JONATHAN M. KAMIN, ESQUIRE, DAVID A. WOLF, ESQUIRE, DEBORAH R. ERBSTEIN, ESQUIRE, and the law firm of GOLDBERG, KAMIN & GARVIN, LLP, together with Respondent, PITTSBURGH WATER & SEWER AUTHORITY, by and through its attorneys, KAREN O. MOURY, ESQUIRE AND LAUREN M. BURGE, ESQUIRE and the law firm of ECKERT SEAMANS CHERIN & MELLOTT, LLC and files the following Joint Motion and in support thereof states as follows:

1. On or about November 13, 2022 the Complainants filed a two count Complaint in which they alleged that the Pittsburgh Water & Sewer (“PWSA”) has incorrectly calculated the stormwater runoff which forms the basis of the PWSA invoices for 2022 and the PWSA rates, as reflected on the

Complainants 2022 PWSA invoices (“Stormwater Charges”), are not just and reasonable and therefore, are in violation of 66 Pa.C.S.A §1301.

2. On January 4, 2023, the Pennsylvania Commonwealth Court released an opinion in which it has held that Stormwater Charges of the Borough of West Chester constitute a tax. See: *The Borough of West Chester v., Pennsylvania State System of Higher Education and West Chester University of Pennsylvania of the State System of Higher Education*, 2019 WL 3069642 (Pa. Cmwlth. 2023), reported as of March 14, 2023 and on appeal before the Pennsylvania Supreme Court at Docket No. 9 MAP. 2023.

3. In light of the aforesaid decision of the Pennsylvania Commonwealth Court, the Complainants previously sought leave to file an Amended Complaint pursuant to 52 Pa. Code §5.91. Said Motion is part of the record in this matter and incorporated herein by reference thereto.

4. The proposed Amended Complaint alleges that PWSA has no authority to levy a tax in the form of Stormwater Charges and assuming *arguendo* that it does have authority, the Complainants as non-profits are therefore immune from payment of a tax.

5. Additionally, the proposed Amended Complaint alleges that the Stormwater Charges as a tax together with the applicable credits as applied, violate the Uniformity Clause of the Pennsylvania Constitution, Article VIII, § 1.

6. PWSA’s response to the Complainants’ Motion for Leave to Amend is due to be filed with the Commission on or before March 16, 2023.

7. During the pendency of the aforesaid, counsel for both the Complainants and PWSA met and conferred as to the proper forum to raise the issues addressed in the Complainants’ proposed Amended Complaint.

8. It is believed and averred that for purposes of judicial economy, the within action should be stayed pending a final determination, by a Pennsylvania court of competent jurisdiction, on the issue of the Stormwater Charges as a “tax” and how that determination applies to municipal authorities operating as public utilities.

9. Neither party shall be prejudiced by the within Motion and all rights, claims, defenses, or interests in the instant action are and shall be preserved pending a final determination by a Pennsylvania court of competent jurisdiction.

WHEREFORE, the Complainants and PWSA respectfully request that the Commission enter an Order staying the within proceedings, pending a final determination from a Pennsylvania Court of competent jurisdiction as discussed above, together with such other and further relief as the Commission deems necessary and just.

Respectfully submitted,

GOLDBERG, KAMIN & GARVIN, LLP

/s/ David A. Wolf

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SMITHFIELD CEMETERY*

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ATTORNEYS FOR RESPONDENT,
*PITTSBURGH WATER AND SEWER
AUTHORITY*

CERTIFICATE OF SERVICE

I hereby certify that on this 16 day of March, 2023, I served the foregoing MOTION FOR STAY as follows:

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ORDER

AND NOW the _____ day of March 2023, upon consideration of the parties' Joint Motion for Stay of Proceedings, together with good cause shown, it is ORDERED, ADJUDGED and DECREED that the Motion is GRANTED and the within action is STAYED, until further Order by the Commission.

J.