



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

December 18, 2018

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17105

Re: Implementation of Chapter 32 of the Public Utility
Code Re Pittsburgh Water and Sewer Authority
Docket No. M-2018-2640802 (Water)
Docket No. M-2018-2640803 (Wastewater)

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E)
Prehearing Memorandum in the above-captioned proceeding.

Copies are being served on all active parties of record as evidenced in the attached
Certificate of Service. If you have any questions, please contact me at (717) 783-6151.

Sincerely,

John M Coogan
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney I.D. No. 313920

JMC/jfm
Enclosure

cc: Hon. Mark A. Hoyer (ALJ, PUC Pittsburgh)
Hon. Conrad A. Johnson (ALJ, PUC Pittsburgh)
Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Chapter 32 of the	:	Docket Nos.
Public Utility Code Re Pittsburgh	:	M-2018-2640802 (Water)
Water and Sewer Authority	:	M-2018-2640803 (Wastewater)

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Prehearing Memorandum** on December 18, 2018, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Served via First Class and Electronic Mail

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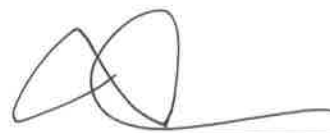
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the Public	:	M-2018-2640802
Utility Code Regarding Pittsburgh Water and	:	M-2018-2640803
Sewer Authority – Stage 1	:	

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

**TO DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE MARK A. HOYER AND
ADMINISTRATIVE LAW JUDGE CONRAD A. JOHNSON:**

In accordance with the Prehearing Conference Order dated December 7, 2018, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby submits this Prehearing Memorandum in the above-captioned docket. The I&E prosecutors assigned to this proceeding are Gina L. Miller and John M. Coogan. Ms. Miller and Mr. Coogan may be contacted as follows:

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I. BACKGROUND

In accordance with Act 65, the Pennsylvania Public Utility Code (“Code”) was amended to grant the Commission jurisdiction over the provision of utility water, wastewater, and stormwater service by entities created by Pennsylvania cities of the second class under the Municipality Authorities Act.¹ These amendments established regulatory deadlines, requirements, and obligations for subject entities, including PWSA, and those amendments are now codified in Chapter 32 of the Code. Consistent with Chapter 32, the Commission’s jurisdiction over PWSA became effective on April 1, 2018² and, inter alia, PWSA was statutorily required to file its initial water and wastewater tariffs by July 2, 2018³ and make a compliance filing (“Compliance Plan”) by September 28, 2018.⁴ Specifically, PWSA was required to file a Compliance Plan with the Commission that includes provisions designed to bring the following areas into compliance with the Code, the Commission’s regulations and orders, and other applicable rules: “existing information technology, accounting, billing, collection and other operating systems and procedures.”⁵ PWSA’s Compliance Plan was also required to include a long-term infrastructure improvement plan (“LTIP”).⁶

¹ At present, Pittsburgh is Pennsylvania’s sole city of the second class.

² 66 Pa. C.S. § 3202(a)(1).

³ PWSA filed its proposed tariffs on July 2, 2018. The Commission thereafter instituted a rate case proceeding, currently pending at R-2018-3002645, R-2018-3002647, et al.

⁴ 66 Pa. C.S. § 3204(b); *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, M-2018-264802 et al, Final Implementation Order (entered on March 15, 2018), p. 7.

⁵ 66 Pa. C.S. § 3204(b).

⁶ Id.

On September 26, 2018, the Commission issued a Secretarial Letter⁷ that explained the process that it prescribed for PWSA's Compliance Plan proceeding. Specifically, the Procedural Secretarial Letter indicated that after PWSA filed its Compliance Plan on September 28, 2018, the Commission would publish notice of the filing in the Pennsylvania Bulletin on October 13, 2018, interested parties could file comments within 20 days of the publication, and within 45 days, the Commission would issue a secretarial letter assigning the filings to the OALJ for resolution of any factual matters that interested parties may seek to develop. In conjunction with the timeline set by the Commission, PWSA filed its Compliance Plan on September 28, 2018, the Commission publicized notice of the filing in the Pennsylvania Bulletin,⁸ and both the Office of the Consumer Advocate ("OCA") and Pittsburgh UNITED ("UNITED") filed timely comments.

On October 18, 2018, the OCA filed an Answer, Notice of Intervention, and Public Statement in this case. On October 22, 2018, I&E entered its appearance,⁹ and on November 14, 2018, the Office of the Small Business Advocate entered its appearance. Petitions to Intervene were filed by Pennsylvania American Water Company and UNITED on October 30, 2018 and November 1, 2018, respectively.

⁷ "Procedure for Commission Review of the September 28, 2018 Compliance Plan" (the "Procedural Secretarial Letter").

⁸ 48 Pa.B. 6635.

⁹ I&E notes that it also filed a corrected Notice of Appearance on November 28, 2018.

On November 28, 2018, the Commission issued a Secretarial Letter (“Staff Directive”) which referred PWSA’s Compliance Plan to the OALJ for a two-stage evidentiary proceeding. The Staff Directive was accompanied by a document titled “Technical Staff Initial Report and Directed Questions Stage 1” which set forth directed questions to be addressed by parties to Stage 1 of PWSA’s Compliance Plan.¹⁰ On November 29, 2018, parties to PWSA’s pending rate case proceeding filed a Joint Petition for Settlement (“Joint Settlement Petition”), agreeing that PWSA would provide revisions and supplemental materials to its Compliance Plan regarding various issues.¹¹ Additionally, parties agreed to a non-exclusive list of issues that would be further investigated in the Compliance Plan proceeding.¹² Many of these issues were addressed by the parties in the rate case proceeding, but parties agreed they would be further examined in the Compliance Plan proceeding. Subsequently, the OALJ assigned Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Conrad A. Johnson (“ALJ Hoyer” and “ALJ Johnson”, or collectively, “the ALJs”) to preside over this matter. On December 7, 2018, the ALJs issued a Prehearing Conference Order scheduling a telephonic Prehearing Conference in this case for December 20, 2018 at 10:00 a.m. I&E submits this Memorandum in compliance with the Prehearing Conference Order issued by the ALJs.

¹⁰ On December 11, 2018, both the OCA and UNITED filed Petitions for Clarification and Reconsideration of the Staff Directive, which remain pending.

¹¹ See “Proposed Schedule” discussion below at footnote 33 for a list of revisions and supplemental materials.

¹² See Joint Settlement Petition, Pennsylvania Public Utility Commission, et al v. Pittsburgh Water and Sewer Authority -Water and Wastewater, Docket No. R-2018-3002645 & R-2018-3002647 (filed November 29, 2018), pp. 26-29, ¶¶H.5-H7, H9-H13.

II. WITNESSES

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

- Anthony Spadaccio, Fixed Utility Financial Analyst
- D.C. Patel, Fixed Utility Financial Analyst
- Ethan Cline, Fixed Utility Valuation Engineer
- Israel Gray, Pipeline Safety Inspector and Fixed Utility Valuation Engineer

The I&E witnesses may be contacted through the contact information listed above for Ms. Miller and Mr. Coogan. I&E notes that this listing of witnesses is provided without analysis of the positions of all parties to this proceeding and without the benefit of completed discovery. Furthermore, the list is provided while several parties' request for reconsideration of the Staff Directive is pending and prior to the Commission's Final Order is issued in PWSA's pending rate proceeding, each of which may impact issues that are the subject of PWSA's Compliance Plan and the Staff Directive. Due to these unique circumstances, I&E necessarily reserves the right to supplement this witness list, to remove witnesses from this list, and to reassign issues between witnesses as necessary to facilitate the development of a full record in this case. The ALJs and all active parties will be notified of any amendments to the I&E witness list.

III. ISSUES

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

List of Preliminary Issues for Witness Anthony Spadaccio

- Financial reports & projections
- Financial practices
- Financing of PWSA's Capital Improvement Plan
- Any other issues involving compliance with the PA Public Utility Code, Commission regulations, Commission orders and policy statements as relevant in a financial analysis of PWSA's existing practices and procedures
- Any other financial issues raised through PWSA's provision of information in response to the Commission's Technical Staff Initial Report and Directed Questions, Stage 1

List of Preliminary Issues for Witness D.C. Patel

- Compliance issues implicated through PWSA's relationship with the City of Pittsburgh
- Capital Lease Agreement
- Billing arrangement with ALCOSAN
- Billing arrangement with Pennsylvania American Water Company
- City residency requirement
- Accounting practices
- Uncollectible accounts
- Collections policies
- Customer Service policies
- Reporting under NARUC's uniform system of accounts
- Bulk wastewater conveyance agreements
- Customer advance financing, refunds and facilities on private property
- Customer assistance program
- Limitation of Liability

- Any other issues involving compliance with the PA Public Utility Code, Commission regulations, Commission orders and policy statements as relevant in an accounting and operations analysis of PWSA's existing practices and procedures
- Any other accounting and operational issues raised through PWSA's provision of information in response to the Commission's Technical Staff Initial Report and Directed Questions, Stage 1

List of Preliminary Issues for Witness Ethan H. Cline

- Any LTIP issues (potential consolidation of the LTIP is pending)
- Unbilled and/or unmetered usage
- Annual depreciation reports
- Service life studies
- Capital Improvement Plan
- Non-revenue water
- Unaccounted for water
- Potential DSIC implementation
- Duty to make line extensions
- Special Utility Service
- Highland Membrane Filtration Plant & Highland No. 1 Reservoir
- Public fire hydrant service & fire protection charges
- Bulk water sales
- Any other issues involving compliance with the PA Public Utility Code, Commission regulations, Commission orders and policy statements as relevant in an engineering analysis of PWSA's existing practices and procedures
- Any other engineering issues raised through PWSA's provision of information in response to the Commission's Technical Staff Initial Report and Directed Questions, Stage 1

List of Preliminary Issues for Witness Israel Gray

- Any LTIP issues (potential consolidation of the LTIP is pending)
- Plans to address lead levels in water supply
- Replacement of Lead Service Lines
- Safety issues related to PWSA's Capital Improvement Plan

- Safety reporting
- Emergency management & security procedures
- Unscheduled service interruptions
- Contractor Qualifications
- Need for operating metrics & cost effectiveness for infrastructure improvement projects
- Risk Assessment Model
- Leak surveys
- Distribution system standards & design
- Mandatory conservation measures
- Any other issues involving compliance with the PA Public Utility Code, Commission regulations, Commission orders and policy statements as relevant in a safety analysis of PWSA's existing practices and procedures
- Any other safety and engineering issues raised through PWSA's provision of information in response to the Commission's Technical Staff Initial Report and Directed Questions, Stage 1

I&E notes that the above listing of issues is provided without analysis of the positions of all parties to this proceeding and without the benefit of completed discovery. Furthermore, the list is provided while several parties' request for reconsideration of the Staff Directive is pending and prior to the Commission's Final Order is issued in PWSA's pending rate proceeding, each of which may impact issues that are the subject of PWSA's Compliance Plan and the Staff Directive. Due to these unique circumstances, I&E necessarily reserves the right to supplement this list, to delete entries from this list, and to reassign issues between witnesses as necessary to facilitate the development of a full record in this case.

IV. EVIDENCE

I&E expects to present all written direct, rebuttal and surrebuttal testimony and accompanying exhibits at the evidentiary hearing. Moreover, I&E intends to rely on PWSA's filing and all supplemental materials provided by PWSA, 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, because this Compliance Plan proceeding concerns PWSA's compliance with various laws and regulations, I&E avers that many pertinent issues may more properly be characterized as questions of law. Therefore, there may be issues of law or Commission policy 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 thereby reserves the right to dispense with testimony when, in its opinion, an issue can be adequately addressed through briefing.

V. DISCOVERY

Due to the time limitations in the proceedings, I&E requests that the Commission's Rules of Practice and Procedure for the conduct of discovery be modified as follows:

1. Answers to written interrogatories shall be 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 be served to the ALJ in writing within five (5) days of service of interrogatories.
3. Motion to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) days of service of written objections.
4. Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) days of service of such motions.
5. Discovery and discovery-related pleadings served after 12:00 noon on a Friday or after 12:00 p.m. on any business day preceding a state holiday will be deemed to be served on the next business day.

As discussed in detail below, parties will be challenged by an abbreviated review schedule for a novel, complex proceeding. To assist adequate development of the record, parties should be required to provide responses to interrogatories within 10 calendar days of service.

VI. PROPOSED SCHEDULE

The parties have not yet agreed to a schedule. I&E proposes the following schedule.

PWSA Revised Compliance Plan & Direct Testimony	February 1, 2019
Intervenor Direct	April 2, 2019
Rebuttal	May 2, 2019
Surrebuttal	May 17, 2019
Hearings (Harrisburg)	May 22-24, 2019
Main Brief	June 20, 2019
Reply Brief	July 1, 2019
Recommended Decision	July 29, 2019

In accordance with the Staff Directive, the OALJ must issue a Recommended Decision no later than eight months from November 28, 2018, i.e., July 29, 2019. PWSA has already filed part of its case-in-chief with the September 28, 2018 Compliance Plan filing. However, in addition to direct testimony, I&E asserts PWSA is still missing two mandatory elements from its case-in-chief: (1) responses to all questions and materials per the corrected Commission Technical Staff Report And Directed Questions Stage 1 issued on November 28, 2018 (“Commission Directed Questions”), and (2) all revisions to and supplemental materials for the Compliance Plan and LTIP (“Compliance Plan Revisions”) in accordance with the Joint Settlement Petition in PWSA’s pending rate

case proceeding.¹³ For the record to be adequately developed for the OALJ to issue a Recommended Decision by July 29, 2019, I&E submits PWSA must be directed to file its complete case-in-chief no later than February 1, 2019. Because PWSA has the burden of proof,¹⁴ I&E avers parties cannot adequately participate in this proceeding until PWSA's complete case-in-chief is filed.

Providing these elements by February 1, 2019 will allow intervenors a minimally adequate amount of time to prepare direct testimony. In typical 1308(d) base rate case proceedings, intervenors have approximately 90 days between filing of a utility's case-in-chief and when direct testimony is due. Although this is not a base rate proceeding, I&E submits the novelty, volume and complexity of issues clearly equals, if not exceeds, that of such a proceeding. The Compliance Plan proceeding's expansive mandate is to bring the entirety of PWSA operations into compliance with the Public Utility Code. This immense charge necessitates review of essentially all of PWSA's operations, policies, and practices. Accordingly, the parties should be afforded as much time as practicable to develop the record for this comprehensive proceeding.

Although PWSA filed its Compliance Plan on September 28, 2018 and materials from PWSA's pending rate case proceeding may be used in the Compliance Plan

¹³ Per the November 28 Secretarial Letter, these Compliance Plan Revisions would address "Stage 1" issues only. However, I&E acknowledges the OCA and Pittsburgh UNITED have filed Petitions for Clarification and/or Reconsideration of the Commission's directions regarding this two-stage process. I&E asserts that if the Commission grants these petitions in whole or in part, PWSA may be required to file additional or all Compliance Plan Revisions together (i.e., regarding Stages 1 & 2) to complete its case-in-chief.

¹⁴ 66 Pa. Code § 332(a). *See also* Joint Settlement Petition, p. 24, ¶H.2 ("PWSA agrees it has the burden of proof in the Compliance Plan proceeding to show that every element of its Compliance Plan, and the policies and procedures described, referenced, or referred to therein, is just and reasonable, is consistent with all applicable laws, regulations, and policies, and is in the public interest").

proceeding,¹⁵ I&E asserts that both the importance and volume of issues *as-yet to be addressed by PWSA*¹⁶ necessitates that intervenors be provided at least 60 days after PWSA files its complete case-in-chief to prepare intervenor direct testimony. The reasons PWSA must provide these materials before intervenor direct testimony is due are discussed in more detail below.

Finally, I&E notes PWSA has had notice of the Commission Directed Questions and Compliance Plan Revisions since November 28, 2018 and November 29, 2018, respectively.¹⁷ Accordingly, if PWSA's complete case-in-chief is due by February 1, 2019, PWSA will have had over 60 days since the Joint Settlement Petition was filed and the Commission issued its directed questions to develop these supplemental materials. Although the ALJ has not yet confirmed a procedural schedule, I&E submits it is reasonable to expect PWSA to provide these materials on an abbreviated timeline.¹⁸ All parties will be operating on an abbreviated timeline. Additionally, answers to these materials are completely within PWSA's control. In contrast, parties will need to engage in extensive discovery to evaluate PWSA's case-in-chief before developing their direct testimony.

I&E respectfully submits that if intervenors are not provided at least 60 days to provide direct testimony after PWSA files its complete case-in-chief, their ability to develop a full and complete record in this case will be compromised. In that event, I&E

¹⁵ See Joint Settlement Petition, p. 24, ¶III.H.3 ("Parties will not object in the Compliance Plan and/or LTIIP proceeding to the admission of any testimony, documents, or answers to interrogatories exchanged throughout the course of this proceeding").

¹⁶ Specifically, responses to the Commission's Directed Questions and Compliance Plan Revisions.

¹⁷ PWSA was also party to settlement negotiations regarding the Compliance Plan Revisions.

¹⁸ As explained above, "abbreviated" in relation to a typical 1308(d) base rate proceeding.

reserves the right to pursue additional remedies, including petitioning the Commission for an extension of time so the OALJ may issue its Recommended Decision after July 29, 2019 and/or the Commission may issue an Order regarding PWSA's Compliance Plan after November 28, 2019.

Commission Directed Questions

PWSA must provide answers to the Commission Directed Questions before other parties can proceed with direct testimony for several reasons. First, it is clear the Commission will evaluate PWSA's (and parties') answers to the Commission Directed Questions in its review of the Compliance Plan under 66 Pa. C.S. § 3204(c). As explained above, PWSA carries the burden of proof in this proceeding. Therefore, PWSA must first provide its answers to the Commission Directed Questions explaining how it proposes to ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service.

Second, many of the questions ask for information not provided in the rate case proceeding or in the Compliance Plan filing and currently only within PWSA's control. For instance, the questions ask for various documents supporting the Compliance Plan;¹⁹ PWSA's plans to finance its Capital Improvement Plan (CIP);²⁰ how PWSA will address various Department of Environmental Protection mandates;²¹ PWSA's competitive bidding and contractor qualification processes;²² PWSA's Emergency Response Plan;²³

¹⁹ Commission Directed Questions, pp. 2-3.

²⁰ Id. at 3.

²¹ Id. at 3-5.

²² Id. at 5.

²³ Id. at 7 (to be reviewed on a confidential basis).

details regarding meters in the CIP;²⁴ details regarding main locations and replacement plans;²⁵ how PWSA will meet water conservation standards;²⁶ PWSA's standard operating procedure regarding service outages;²⁷ what types of accounting practices PWSA uses;²⁸ services and costs between PWSA and the City of Pittsburgh;²⁹ revenue loss associated with and plans to mitigate unmetered and unbilled usage;³⁰ and details regarding bulk water sales and conveyance.³¹ Unlike materials typically produced in discovery, I&E avers answers to these issues constitute PWSA's case-in-chief and therefore parties cannot fully proceed until PWSA provides its responses.

Third, it would create an unjust and inefficient process to expect parties develop testimony regarding answers to the Commission Directed Questions without first receiving PWSA's responses. Parties would be forced to ask interrogatories redundant with the Commission Directed Questions, essentially creating PWSA's case-in-chief before it is filed.³² I&E submits this inefficient process would transfer PWSA's burden of production to all other parties, create a strain on parties' resources, lead to confusion, and compromise the development of a full and complete record in this case.

²⁴ Id. at 8.

²⁵ Id. at 9.

²⁶ Id. at 9.

²⁷ Id. at 10.

²⁸ Id. at 12.

²⁹ Id. at 14.

³⁰ Id. at 15-16.

³¹ Id. at 18-20.

³² Under this scenario, PWSA would presumably file its direct testimony concurrently with intervenors.

Compliance Plan Revisions

The second element PWSA must provide to complete its case-in-chief are the Compliance Plan Revisions per the Joint Settlement Petition. Parties to the Joint Settlement Petition agreed many issues would be addressed in the Compliance Plan proceeding. Accordingly, PWSA agreed it would make revisions to and provide supplemental materials for numerous elements PWSA's Compliance Plan.³³ Until PWSA provides these items, parties cannot adequately develop direct testimony. Although the approval of the Joint Settlement Petition is currently pending before the OALJ, I&E submits PWSA must provide the agreed-upon Compliance Plan Revisions to complete its case-in-chief and allow parties adequate opportunity to develop direct testimony. For the Compliance Plan Revisions to be adequately considered by all parties in this proceeding, PWSA cannot submit its revisions in a piecemeal fashion.

VII. SERVICE OF DOCUMENTS

For purposes of satisfying in-hand requirements for discovery responses, prepared testimony and briefs, I&E will accept electronic delivery of documents with a follow-up hard copy provided by regular first-class mail.

³³

See Joint Settlement Petition, pp. 22-23, ¶G.1.b.i.(a) (PWSA agreed it will amend its Compliance Plan regarding ALCOSAN); pp. 24-25, ¶H.4 (PWSA agreed to provide supplemental information regarding numerous topics); p. 28, ¶H.8 (PWSA agreed it would provide direct testimony regarding numerous customer service topics in the Compliance Plan proceeding); p. 29, ¶H.10 (PWSA agreed it would address the cost effective manner of collecting overdue payments as part of the Compliance Plan).

VIII. PUBLIC INPUT HEARINGS

To the extent that public input hearings are deemed necessary in this proceeding, I&E advocates for the use of Smart Hearings where possible.

IX. 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 be "Gina L. Miller", with a long horizontal flourish extending to the right.

Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission

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December 18, 2018