



VIA E-FILE

The Honorable Mary Long
Administrative Law Judge
Pennsylvania Public Utility Commission
301 5th Avenue, Suite 220
Pittsburgh, Pennsylvania 15222
malong@pa.gov

April 6, 2020

Re: PA Public Utility Commission v. Pittsburgh Water and Sewer Authority
Docket Nos. R-2020-3017951; R-2020-3017970

Dear Judge Long:

Enclosed, please find the **Answer of Pittsburgh UNITED in Support of the March 31, 2020 Expedited Motion of the Bureau of Investigation and Enforcement.**

Pursuant to the Commission's Emergency Order issued on March 20, 2020, and as indicated on the attached Certificate of Service, service on the parties was accomplished by email only.

Respectfully submitted,

Ria M. Pereira
Counsel for Pittsburgh UNITED

CC: Certificate of Service
Secretary Chiavetta

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
:
v. : **Docket No. R-2020-3017951**
:
:
:
Pittsburgh Water and Sewer Authority :
:

Certificate of Service

I hereby certify that I have this day served copies of the **Answer of Pittsburgh UNITED in Support of the March 31, 2020 Expedited Motion of the Bureau of Investigation and Enforcement** upon the parties of record in the above-captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

VIA EMAIL

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April 6, 2020

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2020-3017951
	:	R-2020-3017970
	:	
Pittsburgh Water and Sewer Authority	:	
	:	

**ANSWER OF PITTSBURGH UNITED IN SUPPORT OF THE MARCH 31, 2020
EXPEDITED MOTION OF THE BUREAU OF INVESTIGATION AND
ENFORCEMENT**

Pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§ 5.61-5.63, Pittsburgh UNITED, through its counsel at the Pennsylvania Utility Law Project, hereby files this Answer to the Expedited Motion of the Bureau of Investigation and Enforcement (I&E) for an Extension of the Statutory Suspension Period of Pittsburgh Water and Sewer Authority’s Water and Wastewater Base Rate Proceeding (Motion). As more fully explained below, Pittsburgh UNITED supports the relief requested by I&E, and seeks further relief as described below pursuant to 52 Pa. Code § 5.62. In support thereof, and in response to I&E’s Motion, Pittsburgh UNITED asserts the following:

1. Pittsburgh UNITED agrees with and incorporates by reference herein paragraphs 1-2 of the Motion describing the emergency actions taken by Pennsylvania’s Governor Tom Wolf to protect the public from further spread of the novel coronavirus, COVID-19.
2. On March 6, 2020, the same day that Governor Wolf issued the Disaster Proclamation related to COVID-19, Pittsburgh Water and Sewer Authority (PWSA) filed (1) a water base rate case (Docket No. R-2020-3017951), (2) a wastewater base rate case (Docket No.

R-2020-3017970), and (3) a Petition for Waiver of Provisions of Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to Authorize the Pay-As-You-Go Method of Financing (Docket No. P-2020-3019019).

3. On March 6, 2020, PWSA filed a Petition for Consolidation of Water and Wastewater Rate Proceedings and For Authorization to Use Combined Water and Wastewater Revenue Requirements.
4. On March 6, 2020, PWSA filed a Petition to Consolidate its DSIC Petition with Base Rate Case Filings for Both Water and Wastewater Conveyance.
5. On March 13, 2020, the Commission issued an Emergency Order, which took decisive and dramatic steps to prohibit public utilities from terminating service to residential consumers, except in emergency circumstances.¹ In doing so, the Commission squarely recognized the profound economic impact that the emergency actions taken in response to COVID-19 would have on residential consumers and the need for emergency action to ensure that households would remain connected to critical service throughout the emergency, even if they cannot afford to pay for service. In issuing its Order, the Commission concluded: “Irreparable injury to the public is likely to occur with disruption of service, creating a clear and present danger to life.”²
6. On March 19, 2020, Governor Tom Wolf ordered the closure of all non-life-sustaining businesses in Pennsylvania.³

¹ Public Utility Service Termination Moratorium Proclamation of Disaster Emergency – COVID-19, Emergency Order, Docket No. M-2020-3019244 (March 13, 2020).

² Id., at 2.

³ Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses that are Not Life Sustaining (March 19, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf>.

7. On March 20, 2020, counsel for Pittsburgh UNITED entered their appearance in both PWSA's water and wastewater rate cases.
8. On March 20, 2020, the Commission issued a further Emergency Order which concluded that, pursuant to the Governor's Proclamation of Disaster Emergency, "[a]ll statutory and regulatory deadlines may be suspended, extended, waived or changed during the pendency of the Proclamation of Disaster Emergency."⁴ The Commission further ordered that, "[f]ollowing the termination of the Proclamation of Disaster Emergency, all deadlines suspended may be extended by an additional thirty (30) days"⁵
9. In its March 20 Emergency Order, the Commission delegated authority to each of its Bureaus to "*suspend extend, waive or change a statutory or regulatory deadline which may hinder, rather than further, the mission of the Commission*, after consultation with all interested parties, as deemed necessary and appropriate."⁶
10. On March 31, 2020, I&E filed the instant Motion. In its Motion, I&E requests that an Order is issued extending the statutory suspension period pursuant to 66 Pa. C.S. § 1308(d) in the present matter for a time period commensurate with the closure of the Commission's offices during the pendency of the COVID-19 pandemic. (Motion at 1). In its Motion, I&E properly concludes that extension of the statutory suspension period is warranted and necessary given the scope of the current pandemic. (See *id.* at 2).
11. Pittsburgh UNITED asserts that failure to grant an extended suspension of the procedural schedule will result in severe and irreparable harm to Pittsburgh UNITED, its members, and the communities it represents. (See *id.*). Pittsburgh UNITED agrees with each of the

⁴ Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Emergency Order, Docket No. M-2020-3019262 (March 20, 2020).

⁵ Id. at 4.

⁶ Id. (emphasis added).

reasons set forth by I&E in support of granting an extended suspension in the present matter, for the following reasons:

- a. Similar to I&E, the offices of counsel for Pittsburgh UNITED, the Pennsylvania Utility Law Project, have been closed indefinitely due to the COVID-19 pandemic. Counsel for Pittsburgh UNITED was granted a waiver on March 29, 2020 to utilize its physical offices on a limited basis, given Counsel's role in providing legal representation to low income households who are without utility services through this crisis, Counsel may still only access its physical offices on an extremely limited basis. Counsel may not fully return to their offices until Governor Wolf's March 19 Emergency Order closing all non-life sustaining businesses is lifted. Regardless of the willingness of counsel for Pittsburgh UNITED to work remotely from home, Pittsburgh UNITED shares the I&E's concern that the ability to properly investigate PWSA's filing "has been severely compromised" by Pittsburgh UNITED's inability to properly access its offices and the technology and resources contained therein. (Motion at 11). Pittsburgh UNITED asserts that the COVID-19 pandemic will continue to present insurmountable logistical issues that will necessarily impact the ability of Pittsburgh UNITED and its Counsel to protect the rights of its members and the low and moderate income customers that Pittsburgh UNITED seeks to protect through its intervention in this proceeding.
- b. Pittsburgh UNITED also shares I&E's concerns about safely and adequately viewing confidential documents while working remotely. (See Motion at 5). As previously indicated, the offices for the Counsel for Pittsburgh UNITED have been closed and are largely inaccessible. In order to protect the interests of Pittsburgh

UNITED, Counsel would need to defy its office closure policies – at the risk of their own personal safety and the safety of others. The parties should not be put in a position of choosing between protecting health and safety, and protecting the interest of its clients and low income consumers in Pennsylvania.

- c. Pittsburgh UNITED shares I&E’s concern that PWSA elected to file its base rate case during this public health emergency. (Motion at 9). As indicated above, PWSA filed the current proceeding on March 6, 2020, the same date on which Governor Wolf issued his Disaster Proclamation. Like I&E, Pittsburgh UNITED recognizes the purpose behind base rate filings, including the need to recoup operational expenses. (See id). However, PWSA indicates that the present rate case is driven, in part, by the fact that “PWSA is now positioned to begin undertaking many important long-term capital projects.” (PWSA St. No. 1 at 4: 22-24). In light of the potential long-term impacts of the current emergency on the economy, Pittsburgh UNITED asserts that it is impossible to accurately evaluate the ability of consumers to bear the costs of such capital improvements, or to prioritize such projects. Moreover, given the immense and sudden impact of the current emergency on the economy and consumer’s livelihoods, it is impossible to properly determine whether PWSA’s proposed rates are just and reasonable pursuant to 66 Pa. C.S. § 1301.
- d. Pittsburgh UNITED agrees with I&E that the significant difficulties of investigating a rate case during the pendency of the present emergency become more onerous in light of the complexity of PWSA’s filing. (See Motion at 13). In particular, Pittsburgh UNITED is concerned about the effect of PWSA’s multi-year

rate proposal on consumers, given that the long-term consequences of the pandemic are unclear at the present time. (See PWSA St. No. 1 at 7: 21, 8: 1-2). Pittsburgh UNITED further agrees with I&E that PWSA's filing is further complicated by the Commission's Recent Actions in PWSA's Stage 1 Compliance Plan proceeding. (Motion at 17).⁷ The parties must be given adequate opportunity to investigate PWSA's rate proposal and its effect on consumers in light of the interplay of the March 26 Compliance Plan Order. Given the multitude of hardships faced by the parties as a result of the COVID-19 pandemic, Pittsburgh UNITED agrees with I&E that it is unfeasible to develop an adequate record related to the effects of PWSA's rate proposal without grant of an extended suspension. (Motion at 13).

12. Pittsburgh UNITED is deeply concerned about the profound economic impact that the COVID-19 pandemic will have on low and moderate households in Pennsylvania. Such households are uniquely vulnerable to the economic impact caused by COVID-19 given that a large swath of commerce in the state has come to an abrupt halt. In particular, low wage, hourly workers with high-contact, public-facing jobs (e.g. restaurant and food service staff, teaching assistants, part time and seasonal workers) have already been and continue to be profoundly impacted by the financial fallout of the pandemic. Such low wage workers are further disadvantaged because their positions typically lack paid leave, often rely on tips to make livable wages, and cannot operate remotely.⁸ It is essential and in the public interest for the parties in the present case to be given adequate opportunity to

⁷ See also Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority Stage 1, Opinion and Order, M-2018-2640802 et al. (Opinion and Order entered March 26, 2020).

⁸ See, e.g., Who is Most at Risk of the Coronavirus Crisis: 24 Million of the Lowest-Income Workers, Politico (March 21, 2020), <https://www.politico.com/interactives/2020/coronavirus-impact-on-low-income-jobs-by-occupation-chart/>.

investigate PWSA's proposal and its effect on consumers. Failure to grant an extended suspension of the procedural schedule in this proceeding would hinder the Commission in its mission to ensure that rates are just and reasonable and that service remains accessible to consumers based on reasonable terms.

13. Pittsburgh UNITED further asserts that, because of the present emergency, it is currently impossible to determine whether PWSA's proposed rate increases are just and reasonable. A critical component of determining whether a proposed rate is just and reasonable is an examination of whether proposed rates would be affordable to those who reside in a utility's service territory. As I&E's Motion describes, PWSA filed its base rate case on March 6, 2020, the same day that Governor Wolf issued the Disaster Proclamation for the Commonwealth. (Motion at 9). PWSA's proposed rates were designed based on a stable and growing economy. The current economy is starkly different. The economic impacts that are beginning to reverberate throughout the country have potentially long lasting effects on consumers' wages and prosperity. In order to fully investigate PWSA's rate filing in light of these economic changes, Pittsburgh UNITED asserts that it is just and reasonable to grant an extended suspension in the present matter commensurate with the closure of the Commission's offices during the pendency of the COVID-19 pandemic. Pittsburgh UNITED further asserts that it is necessary and proper to also suspend the statutory timeframe for investigation of a rate filing pursuant to 66 Pa. C.S. § 1308(d).
14. Pittsburgh UNITED also asserts that the Commission cannot reasonably determine whether PWSA's proposed changes to its low income programs are appropriately available to at-need consumers and properly funded given the current uncertain economic climate. The closure of all non-life sustaining businesses in Pennsylvania has caused unemployment in

the state to surge.⁹ With this sharp and unprecedented rise in unemployment, it is impossible to determine how many PWSA residential customers will currently need the assistance of universal service programming, and what the need for rate assistance will be after the health and economy of the country has stabilized. The anticipated level of need and program enrollment that PWSA puts forth in their filing is simply not reflective of our present reality. It is therefore necessary and essential to grant an extended suspension in the current proceeding for a period of time commensurate with the closure of the Commission's offices during the pendency of the COVID-19 pandemic and until a more accurate assessment of the needs of low and moderate income consumers can be made.

15. While Pittsburgh UNITED support the I&E's Motion, Pittsburgh UNITED files this Answer seeking additional relief in light of the quickly changing landscape of the pandemic. Specifically, Pittsburgh UNITED respectfully requests that ALJ Long issue an Order requiring PWSA to update its filing and its associated rate request based on then-current market conditions and the needs assessment in its service territory within 30 days of the date that the Governor's Emergency Proclamation is lifted, and prior to commencing with a procedural schedule in this matter. As previously discussed, the economy that forms the basis for PWSA's filing has been greatly altered. As such, in order to properly assess whether PWSA's proposed rates and changes to its low income programming are reasonable and accessible to consumers, PWSA must be required to update its filing based on the conditions that will be present after the pendency of the present emergency.

⁹ See [Pa. Reports 650K Filed Unemployment Claims In Last 11 Days](https://www.pennlive.com/news/2020/03/pa-reports-650k-filed-unemployment-claims-in-last-11-days.html), PennLive (March 26, 2020), <https://www.pennlive.com/news/2020/03/pa-reports-650k-filed-unemployment-claims-in-last-11-days.html>.

Otherwise, if PWSA was not required to update its filing, the dual burdens of production and persuasion would be unfairly shifted to the other parties in the proceeding.

16. The additional relief requested by Pittsburgh UNITED is consistent with the Commission's March 20, 2020 Emergency Order, which held that "[f]ollowing the termination of the Proclamation of Disaster Emergency, all deadlines suspended may be extended by an additional thirty (30) days."¹⁰

WHEREFORE, for the reasons set forth above, Pittsburgh UNITED respectfully requests that the Honorable Mary Long, Administrative Law Judge, issue an Order granting I&E's Motion to grant an extension of the statutory suspension period in the above-captioned matter. Further, Pittsburgh UNITED requests that Judge Long require PWSA to submit an amended filing to its rate case after the pendency of the Proclamation of Disaster Emergency.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT

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¹⁰ Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Emergency Order, Docket No. M-2020-3019262, at 4, para 3 (March 20, 2020)