

COMMONWEALTH OF PENNSYLVANIA



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April 8, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission
v.
Pittsburgh Water and Sewer Authority
Docket Nos. R-2020-3017951 (Water)
C-2020-3019348
R-2020-3017970 (Wastewater)
C-2020-3019349

Dear Secretary Chiavetta:

Attached for electronic filing please find the Answer of the Office of Consumer Advocate in Support of the Bureau of Investigation and Enforcement's Expedited Motion to Extend the Statutory Suspension Period in the above-referenced proceedings.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Enclosures:

cc: The Honorable Mary D. Long (Via Electronic Mail Only)
Certificate of Service

*286240

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission : Docket Nos. R-2020-3017951 (Water)
v. : C-2020-3019348
 : R-2020-3017970 (Wastewater)
Pittsburgh Water and Sewer Authority : C-2020-3019349

I hereby certify that I have this day served a true copy of the following document, the Answer of the Office of Consumer Advocate in Support of the Bureau of Investigation and Enforcement's Expedited Motion to Extend the Statutory Suspension Period, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 8th day of April 2020.

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Dated: April 8, 2020
*286239

FBEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. R-2020-3017951 (Water)
	:	R-2020-3017970 (Wastewater)
Pittsburgh Water and Sewer Authority	:	

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE IN SUPPORT OF
THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
EXPEDITED MOTION TO EXTEND THE STATUTORY SUSPENSION PERIOD

Pursuant to Section 5.103 of the Pennsylvania Public Utility Commission’s (Commission) Regulations, 52 Pa. Code Section 5.103, the Office of Consumer Advocate (OCA) files this Answer in support of the Bureau of Investigation and Enforcement’s (I&E) expedited Motion to extend the statutory suspension period in the above-referenced proceeding. Extending the statutory suspension period is necessary and proper during this emergency period due to the OCA and other parties’ reduced ability to properly and fully investigate Pittsburgh Water and Sewer Authority’s (PWSA or Authority) filings. In addition, the Commission’s closing will likely prevent public input hearings from being convened in a timely manner.

I. BACKGROUND

As set forth in greater detail in I&E’s Motion, on March 6, 2020, Governor Tom Wolf issued a Disaster Proclamation in response to COVID-19. The Disaster Proclamation recognized that the statutes and regulations that govern procedures for Commonwealth agency business may be suspended if strict compliance “would prevent, hinder, or delay necessary action in coping with

this emergency.”¹ On the same date, Pittsburgh Water and Sewer Authority filed a water base rate case, a wastewater base rate case, a Petition seeking waiver of certain statutory provisions to implement a Distribution System Improvement Charge (DSIC), a Petition seeking consolidation of its two base rate proceedings and use of a consolidated water/wastewater revenue requirement, and a Petition seeking consolidation of its DSIC proceeding with the base rate proceedings.

Through its base rate and DSIC filings, PWSA seeks Commission approval to increase water and wastewater base and DSIC rates to produce additional, combined annual operating revenue of \$43.4 million for 2021 and \$12.6 million for 2022. The Authority proposed that new rates take effect on May 5, 2020, anticipating suspension by the Commission for up to an additional seven months, pursuant to 66 Pa. C.S. § 1308(d).² PWSA is a municipal water and wastewater authority serving customers in the City of Pittsburgh and surrounding communities. PWSA provides water service to approximately 80,000 residential, commercial and industrial customers in Allegheny County. PWSA provides wastewater conveyance service to customers in the City of Pittsburgh and also conveys sewage for portions of 24 neighboring communities in Allegheny County.

To date, Formal Complaints, Notices of Appearance, and Petitions to Intervene were submitted by the OCA, I&E, the Office of Small Business Advocate and Pittsburgh UNITED.

On March 15, 2020, Governor Wolf issued an Executive Order implementing telework protocol for state employees for at least fourteen days beginning March 16, 2020, and the closing of all state offices in Dauphin County and the Capitol Complex.³ As a result, the Commission’s

¹ A copy of the Declaration is attached to I&E’s Motion as Exhibit A and available at <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>. This quotation is from page 2.

² See PWSA filing, Vol. I, Tab 2 (Notice of Proposed Rate Changes).

³ <https://www.governor.pa.gov/newsroom/gov-wolf-puts-statewide-covid-19-mitigation-efforts-in-effect-stresses-need-for-every-pennsylvanian-to-take-action-to-stop-the-spread>.

offices and the OCA's office in Harrisburg are closed and all employees are required to work from home, with extremely limited exception.

On March 20, 2020, an Emergency Order was issued by the Commission at Docket No. M-2020-3019262. The Emergency Order provides the Commission with the authority to waive any statutory or procedural deadline, *sua sponte*, in any proceeding if strict adherence to an established deadline will interfere with its ability to administer the Public Utility Code.⁴ Moreover, the Emergency Order authorizes the Presiding Officer to establish reasonable deadlines in rate case proceedings after consideration of the positions of the parties. Emergency Order at 2-3.

On March 31, 2020, I&E filed its Motion, which requested that the Presiding Officer, pursuant to authority under Section 331 of the Public Utility Code, 66 Pa. C.S. Section 331, extend the statutory suspension period until the completion of the emergency disaster period and the resumption of normal Commission operations.⁵ I&E noted that, to date, the Commission has not suspended PWSA's base rate filings and, therefore, no procedural schedule has been established. In the interim, however, the suspension period continues to run.⁶ On April 6, 2020, Pittsburgh UNITED filed an Answer supporting I&E's Motion.

As of April 8, 2020, Pennsylvania now has 14,559 confirmed COVID-19 cases and 240 deaths as a result of this pandemic.⁷ Furthermore, Governor Wolf has continued to issue further restrictions on travel and business operations, including closing non-life-sustaining businesses

⁴ Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Docket No. M-2020-3019262, Emergency Order at 2 (Mar. 20, 2020) (Emergency Order).

⁵ See Motion at 1-2.

⁶ Id. at 8.

⁷ <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Coronavirus.aspx>.

until further notice.⁸ Accordingly, the OCA files this Answer in support of I&E's Motion to Extend the Statutory Suspension Period.

II. ANSWER

The Office of Consumer Advocate supports I&E's Motion. Suspending the statutory suspension period is necessary during this emergency disaster period due to the OCA's and the other parties' reduced ability to properly and fully investigate the Authority's filings during the emergency period. In addition, the Commission's closing may prevent public input hearings from being convened in a timely manner.

A. Legal Authority

Generally, base rate increase proceedings have a nine-month statutory deadline that ensures prompt investigation and review of the filing.⁹ If the Commission fails to render a decision within that period, the increase can go into effect as filed, subject to refund plus interest for any amounts paid that are subsequently not determined to be just and reasonable.¹⁰ The Public Utility Code further provides that Presiding Officers shall have the authority, subject to the Commission's Regulations, to regulate the course of the hearing, dispose of procedural requests or similar matters, and take any other action authorized by Commission rule.¹¹

As noted above, however, the Proclamation issued by Governor Wolf states that regulatory statutes governing the business of a Commonwealth agency, or order, rule or regulation of that agency, is suspended to the extent strict compliance would prevent, hinder, or delay the actions

⁸ <https://www.governor.pa.gov/newsroom/all-non-life-sustaining-businesses-in-pennsylvania-to-close-physical-locations-as-of-8-pm-today-to-slow-spread-of-covid-19/>; <https://www.scribd.com/document/452416027/20200319-TWW-COVID-19-Business-Closure-Order>.

⁹ See 66 Pa. C.S. § 1308(d).

¹⁰ Id.

¹¹ 66 Pa. C.S. § 331(d).

necessary to comply with the emergency declaration.¹² The Commission has since recognized in its Emergency Order that certain statutory and regulatory deadlines may hinder the public service mission of the Commission and its affected stakeholders.¹³ Thus, the Commission is allowing these deadlines to be postponed where appropriate, without violating the timing requirements set forth in the Public Utility Code.

Accordingly, the Presiding Officer has the authority, pursuant to the Public Utility Code, the Governor's Proclamation, and the Commission's Emergency Order, to postpone the procedural schedule in this proceeding, without violating the statutory deadline set forth in the Public Utility Code.¹⁴ This will assist all parties in being able to comply with the ongoing emergency declarations, while providing the parties the opportunity to present their case in this matter when normal Commission operations resume.

B. Extension of the Statutory Suspension Period Will Prevent a Limited Investigation and Review of PWSA's Rate Increase Filings.

Given the current, extraordinary circumstances, the statutory suspension period will limit the ability of the OCA, and the other parties, to adequately investigate and analyze the Authority's filings and will likely prevent public input hearings from being convened in a timely manner, thus preventing the development of a full and complete record.

As indicated above, the circumstances surrounding the COVID-19 pandemic are changing rapidly. Since the issuance of the Proclamation, government offices have been closed in favor of telework arrangements, non-life-sustaining businesses have been closed until further notice, and confirmed cases are continuing to rise. In the midst of all this, many of the parties are trying to adjust to these changes, while continuing to meet their obligations in this proceeding. As noted by

¹² See Motion, Exh. A; see also 35 Pa. C.S. § 7301.

¹³ Emergency Order at 2.

¹⁴ 66 Pa. C.S. Section 1308(d).

I&E, this proceeding provides some particular challenges. It is a complex filing, which includes proposals for multiyear rate increases under recently enacted legislation,¹⁵ a 10% DSIC rate, and a stormwater tariff.¹⁶ Further, the Authority proposes to increase water and wastewater rates by 25.4%, in the first year of new rates, and an additional 6.4% in the second year.¹⁷ Given the financial and economic impact of COVID-19 on PWSA ratepayers, the OCA concurs with I&E's remarks that it is particularly important to ensure that rates established in this proceeding are just and reasonable.¹⁸ Providing additional time to analyze these issues will be critical going forward.

Lastly, given the size of the proposed rate increases and the number of customers affected, the OCA anticipates requesting that public input hearings be scheduled to provide customers the opportunity to speak on the record about how this rate increase will impact them and any quality of service issues. However, given the closing of the Commission's offices statewide, the Commission may not be able to convene public input hearings in a timely manner. Therefore, customers will not be provided a timely opportunity to respond to any issues they may have with the requested increase. This is particularly critical during this time as many customers will be experiencing financial hardship for an extended period of time and the Authority's request will impact them significantly.

For these reasons, the OCA supports I&E's Motion to extending the statutory suspension period to allow for additional time for the parties to analyze the Authority's filing and to provide sufficient opportunity for customers to provide comments.

¹⁵ Act 58 of 2018, codified at 66 Pa. C.S. § 1330(b).

¹⁶ See Motion at 13-17.

¹⁷ See PWSA filing, Vol. I, Tab 2 (Notice of Proposed Rate Changes).

¹⁸ See Motion at 20-22.

III. CONCLUSION

For the reasons set forth above, the OCA supports I&E's Motion to Extend the Statutory Suspension Period. This suspension is necessary to meet the mounting challenges resulting from the COVID-19 pandemic. It will also ensure that the OCA has sufficient time and resources to adequately investigate and support its position in this proceeding and develop a full and complete record for the Commission's consideration.

Respectfully submitted,

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