



COMMONWEALTH OF PENNSYLVANIA

April 13, 2020

**E-FILED**

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 No. R-2020-3017951, R-2020-3017970**

Dear Secretary Chiavetta:

Enclosed please find the Answer and Verification, on behalf of the Office of Small Business Advocate (“OSBA”), to the Bureau of Investigation and Enforcement’s Expedited Motion for an Extension of the Statutory Suspension Period, in the above-captioned proceedings.

Copies will be served on all known parties in these proceedings, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Erin K. Fure

Erin K. Fure  
Assistant Small Business Advocate  
Attorney ID No. 312245

*Enclosures*

cc: Mr. Brian Kalcic  
Parties of Record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Pennsylvania Public Utility Commission</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. R-2020-3017951</b>
	:	
<b>Pittsburgh Water and Sewer Authority (Water)</b>	:	
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	:	
<b>Pennsylvania Public Utility Commission</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. R-2020-3017970</b>
	:	
	:	
<b>Pittsburgh Water and Sewer Authority (Wastewater)</b>	:	

**ANSWER OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE TO  
THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S EXPEDITED MOTION  
FOR AN EXTENSION OF THE STATUTORY SUSPENSION PERIOD OF  
PITTSBURGH WATER AND SEWER AUTHORITY’S WATER AND WASTEWATER  
BASE RATE PROCEEDINGS**

**I.     INTRODUCTION**

Pursuant to the authority issued in Governor Tom Wolf’s Disaster Proclamation attesting to the existence of a disaster emergency in Pennsylvania due to COVID-19 and the Pennsylvania Public Utility Commission’s (“PUC” or “the Commission”) Emergency Order dated March 20, 2020<sup>1</sup>, the Bureau of Investigation and Enforcement (“I&E”) filed an Expedited Motion for an Extension of the Statutory Suspension Period of Pittsburgh Water and Sewer Authority’s (“PWSA” or “the Authority”) Water and Wastewater Base Rate Proceedings (“*Expedited Motion*”) on March 31, 2020. In its *Expedited Motion*, I&E requested the issuance of an order

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<sup>1</sup> *Re: Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, EMERGENCY ORDER*, Docket No. M-2020-3019262 (dated March 20, 2020, ratified on March 26, 2020).

extending the statutory suspension period arising under 66 Pa. C.S. § 1308(d) for PWSA's rate cases at Docket Nos. R-2020-3017951 and R-2020-3017970 by a period of time commensurate with the closure of the Commissions' offices during the COVID-19 pandemic. *Expedited Motion* at p. 1, 22.

Also, in its *Expedited Motion*, I&E provided the following procedural summary: On the morning of March 6, 2020, Governor Tom Wolf issued a Disaster Proclamation attesting to the existence of a disaster emergency in Pennsylvania due to COVID-19. *Expedited Motion* at p. 2. On the afternoon of March 6, 2020, PWSA filed with the Commission (1) a water base rate case at Docket No. R-2020-3017951, (2) a wastewater base rate case at Docket No. R-2020-3017970, and (3) a Petition for Waiver of Provision 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 ("*DSIC Petition*") at Docket No. P-2020-3019019. *Expedited Motion* at p. 3. PWSA also filed on March 6, 2020 a Petition for Consolidation of Water and Wastewater Rate Proceedings and For Authorization to Use Combined Water and Wastewater Revenue Requirements ("*Base Rate Consolidation Petition*"). *Expedited Motion* at p. 3-4. On March 9, 2020, PWSA filed a Petition to Consolidate its DSIC Petition with Base Rate Case Filings for Both Water and Wastewater Conveyance ("*DSIC and Base Rate Consolidation Petition*"). *Expedited Motion* at p. 4. On March 11, 2020, the World Health Organization declared COVID-19 a pandemic. *Expedited Motion* at p. 4. On March 16, 2020, the Commission closed. *Expedited Motion* at p. 4. On March 20, 2020, the Commission issued an Emergency Order at Docket No. M-2020-3019262, which ordered that all statutory and regulatory deadlines prescribed by the Pennsylvania Public Utility Code (the "Code") or applicable law may be suspended, extended, waived or changed during the pendency of the Governor's Proclamation of Disaster Emergency. *Expedited Motion*

at p. 6. As of the date I&E filed its *Expedited Motion*, the Commission had not acted to suspend PWSA's base rate filing, no presiding officer had been assigned, and no litigation schedule had been established. *Expedited Motion* at p.8.

The Office of Small Business Advocate ("OSBA") respectfully submits that I&E has presented sufficient justification for the relief requested in the *Expedited Motion*. Additionally, if the extension is not permitted, the Authority's small commercial and industrial consumers could be unfairly prejudiced. As such, the OSBA submits that the *Expedited Motion* should be granted. For the reasons set forth below, the OSBA submits this Answer in support of the *Expedited Motion*.

## II. ANSWER

I&E argued that PWSA was empowered to decide when to file its base rate cases and elected to do so on the same date, but after, Governor Wolf issued the Disaster Proclamation. *Expedited Motion* at p. 9. Governor Wolf recognized by way of the Disaster Proclamation that statutes and regulations that govern procedures for Commonwealth agency business may need to be altered. *Expedited Motion* at p. 9. The Commission's Emergency Order also recognized that statutory and regulatory deadlines may be suspended, extended, or waived. *Expedited Motion*, at 10. I&E asserted that the COVID-19 crisis is "exactly the type of scenario that the Commission's ability to suspend, extend, or waive statutory deadlines was designed to remediate." *Extended Motion* at p. 10. The OSBA agrees with I&E's arguments.

By choosing to file its base rate cases after the issuance of the Disaster Proclamation, PWSA was on notice at the time of filing that statutes and regulations may be altered. The Commission closed five work days after PWSA made its filings. On March 19, 2020, three days after the Commission closed, Governor Wolf ordered all non-life-sustaining businesses to close

their physical locations by 8 p.m. on that date. A copy of Governor Wolf's March 19, 2020 Order ("*Business Closure Order*") is attached hereto as Appendix A.

The ability to adequately investigate PWSA's filings is complicated by the forced closure of the OSBA's offices, but more importantly, adequate investigation and analysis is nearly impossible due to the ever-changing landscape of Pennsylvania's economy as a result of the *Business Closure Order*. Small businesses are being heavily impacted by the COVID-19 pandemic and *Business Closure Order*. As a result, it is becoming increasingly difficult to predict the size and characteristics of the small industrial and commercial class following the COVID-19 pandemic. Some small businesses may not have been equipped to continue operations following a directive to close their physical location, while other small businesses may have been completely unable to continue operations following the *Business Closure Order*. While loan programs have become available at the state and federal levels, these programs are not without problems. The COVID-19 Working Capital Access Program administered by the Pennsylvania Industrial Development Authority, which provided loans in the maximum amount of \$100,000, is closed as of the date of this filing.<sup>2</sup> While the United States Small Business Administration also offers loans, it reportedly is experiencing delays in administering these loans.<sup>3</sup> Whether small businesses can sustain the COVID-19 pandemic, and to what extent, remains to be seen. As such, an extension of the statutory suspension period by a period of time commensurate with the closure of the Commissions' offices during the COVID-19 pandemic would be in the best interests of small business customers.

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<sup>2</sup> <https://dced.pa.gov/programs/covid-19-working-capital-access-program-cwca/>

<sup>3</sup> Emily Flitter, David McCabe, and Stacy Cowley, *Small Business Aid Program Stretches Agency to Its Limits*, THE NEW YORK TIMES, April 7, 2020, <https://www.nytimes.com/2020/04/07/business/coronavirus-ppp-small-business-aid.html>

I&E additionally argues that PWSA seeks a significant increase in rates, which is predicated upon novel and unprecedented rate mechanisms, including a proposal to make an alternative ratemaking proposal in the form of a multi-year rate plan. *Expedited Motion*, at p. 13, 15-16. According to I&E, the “novel and complexity of PWSA’s waiver requests, and the potentially significant amount of ratepayer impact, highlight the need for parties to adequately investigate the proposal and build a comprehensive record for the Commissions’ consideration.” *Expedited Motion*, at p. 14. I&E stresses the difficulties it is encountering in light of the COVID-19 pandemic and Commission closure, and argues that the public interest is compromised by I&E’s current inability to conduct an adequate investigation and build a comprehensive record. *Expedited Motion* at 11-14.

The OSBA agrees with I&E and once again stresses that an adequate investigation cannot be conducted at this time as the small industrial and commercial class is being heavily impacted by COVID-19 and therefore the size, characteristics, and needs are being modified. It is impossible to predict what the small industrial and commercial class will look like over the course of the next few weeks, let alone in the next year. Again, extending the statutory suspension period by a period of time commensurate with the closure of the Commissions’ offices during the COVID-19 pandemic, will serve the public interest and protect the small industrial and commercial class by allowing the OSBA to gather more information and data regarding the impact COVID-19 will ultimately have on these ratepayers.

Finally, I&E argues that due process and the public interest will be compromised if PWSA’s filing cannot be adequately investigated. *Expedited Motion*, at 20. I&E notes that protection of the public interest must not be compromised because the COVID-19 pandemic is predicted to substantially impact ratepayers financially and with respect to their employment

opportunities. *Expedited Motion*, at 20. As noted previously, the OSBA is aware of the substantial financial harm small businesses are experiencing in light of COVID-19, but the ultimate impact on the small industrial and commercial class remains to be seen. Increasing rates for the small industrial and commercial class at this time will cause further financial distress to small businesses, which may not be able to shoulder such a burden. It is in the public interest to extend the statutory suspension period by a period of time commensurate with the closure of the Commissions' offices during the COVID-19 pandemic.

The OSBA submits that I&E's *Expedited Motion* should be granted because it has provided sufficient justification for the statutory suspension period arising under 66 Pa. C.S. § 1308(d) to be extended. Furthermore, the relief requested in the *Expedited Motion* will protect small industrial and commercial ratepayers.

III. CONCLUSION

In view of the foregoing, the Office of Small Business Advocate respectfully requests that the Pennsylvania Public Utility Commission:

A. Grant I&E's *Expedited Motion* and order the extension of the statutory suspension period arising under 66 Pa. C.S. § 1308(d) for PWSA's rate cases at docket numbers R-2020-3017951 and R-2020-3017970; and

B. Grant such other relief as may be necessary or appropriate.

Respectfully submitted,

/s/ Erin K. Fure

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Assistant Small Business Advocate

For:

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Small Business Advocate

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Dated: April 13, 2020



# APPENDIX A



COMMONWEALTH OF PENNSYLVANIA

OFFICE OF THE GOVERNOR

**ORDER OF**

**THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA REGARDING THE  
CLOSURE OF ALL BUSINESSES THAT ARE NOT LIFE SUSTAINING**

*WHEREAS, the World Health Organization and the Centers for Disease Control and Prevention ("CDC") have declared a novel coronavirus ("COVID-19") a "public health emergency of international concern," and the U.S. Department of Health and Human Services ("HHS") Secretary has declared that COVID-19 creates a public health emergency; and*

*WHEREAS, as of March 6, 2020, I proclaimed the existence of a disaster emergency throughout the Commonwealth pursuant to 35 Pa. C.S. § 7301(c); and*

*WHEREAS, I am charged with the responsibility to address dangers facing the Commonwealth of Pennsylvania that result from disasters. 35 Pa. C.S. § 7301(a); and*

*WHEREAS, in addition to general powers, during a disaster emergency I am authorized specifically to control ingress and egress to and from a disaster area and the movement of persons within it and the occupancy of premises therein; and suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, and combustibles. 35 Pa. C.S. § 7301(f); and*

*WHEREAS, in executing the extraordinary powers outlined above, I am further authorized during a disaster emergency to issue, amend and rescind executive orders, proclamations and regulations and those directives shall have the force and effect of law. 35 Pa. C.S. § 7301(b); and*

*WHEREAS, in addition to my authority, my Secretary of Health has the authority to determine and employ the most efficient and practical means for the prevention and suppression of disease. 71 P.S. § 532(a), 71 P.S. 1403(a); and*

*WHEREAS, these means include isolation, quarantine, and any other control measure needed. 35 P.S. § 521.5.*

*NOW THEREFORE, pursuant to the authority vested in me and my Administration by the laws of the Commonwealth of Pennsylvania, I do hereby ORDER and PROCLAIM as follows:*

**Section 1: Prohibition on Operation of Businesses that are not Life Sustaining**

*All prior orders and guidance regarding business closures are hereby superseded.*

*No person or entity shall operate a place of business in the Commonwealth that is not a life sustaining business regardless of whether the business is open to members of the public. This prohibition does not apply to virtual or telework operations (e.g., work from home), so long as social distancing and other mitigation measures are followed in such operations.*

*Life sustaining businesses may remain open, but they must follow, at a minimum, the social distancing practices and other mitigation measures defined by the Centers for Disease Control to protect workers and patrons. A list of life sustaining businesses that may remain open is attached to and incorporated into this Order.*

*Enforcement actions will be taken against non-life sustaining businesses that are out of compliance effective March 21, 2020, at 12:01 a.m.*

**Section 2: Prohibition on Dine-In Facilities including Restaurants and Bars**

*All restaurants and bars previously have been ordered to close their dine-in facilities to help stop the spread of COVID-19.*

*Businesses that offer carry-out, delivery, and drive-through food and beverage service may continue, so long as social distancing and other mitigation measures are employed to protect workers and patrons. Enforcement actions will be taken against businesses that are out of compliance effective March 19, 2020, at 8 p.m.*

**Section 3: Effective Date and Duration**

*This order is effective immediately and will remain in effect until further notice.*



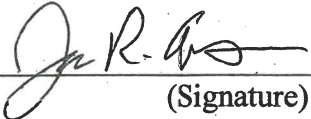
*GIVEN under my hand and the Seal of the Governor, at the city of Harrisburg, on this nineteenth day of March two thousand twenty, the year of the commonwealth the two hundred and forty-fourth.*

*Tom Wolf*  
**TOM WOLF**  
Governor

**VERIFICATION**

I, John R. Evans, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 04/13/20

  
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(Signature)

<b>Pennsylvania Public Utility Commission, et. al.</b>	:	
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<b>v.</b>	:	<b>R-2020-3017951</b>
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<b>Pittsburgh Water &amp; Sewer Authority – Water</b>	:	
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	:	
<b>Pennsylvania Public Utility Commission, et. al.</b>	:	
	:	<b>R-2020-3017970</b>
<b>v.</b>	:	
	:	
<b>Pittsburgh Water &amp; Sewer Authority –</b>	:	
<b>Wastewater</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served via email (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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DATE: April 13, 2020

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