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April 17, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

In Re Cooperation Agreement Between The City Of Pittsburgh and The Pittsburgh Water
and Sewer Authority Docket No. U-2020-3015258

Dear Secretary Chiavetta:

On behalf of the Pittsburgh Water and Sewer Authority (“PWSA”) enclosed for electronic filing please find its Petition to Consolidate Rate Case Proceeding and Cooperation Agreement Proceeding with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely

/s/ Karen O. Moury

Karen O. Moury

KOM/lww
Enclosure

cc: Hon. Mary D. Long w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PWSA's Petition to Consolidate upon persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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/s/ Karen O. Moury

Karen O. Moury, Esq.

Dated: April 17, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	Docket No. R-2020-3017951 (Water)
	:	R-2020-3017970 (Wastewater)
V.	:	
	:	
PITTSBURGH WATER AND SEWER AUTHORITY	:	
	:	
IN RE COOPERATION AGREEMENT BETWEEN THE CITY OF PITTSBURGH AND THE PITTSBURGH WATER AND SEWER AUTHORITY	:	Docket No. U-2020-3015258

**PETITION OF THE PITTSBURGH WATER AND SEWER AUTHORITY TO
CONSOLIDATE RATE CASE PROCEEDING AND
COOPERATION AGREEMENT PROCEEDING**

Pursuant to Sections 5.41 and 5.81 of the regulations of the Pennsylvania Public Utility Commission (“Commission”), 52 Pa. Code §§ 5.41 and 5.81, The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) files this Petition to Consolidate the above-captioned Rate Case Proceeding and Cooperation Agreement Proceeding. By this Petition, PWSA respectfully requests that the Commission formally consolidate the above docket numbers to a single proceeding for all purposes, including hearing and adjudication. In support of this Petition, PWSA states as follows:

I. Background

1. PWSA is a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania that is regulated as a public utility by the Commission.¹ PWSA is responsible for producing and supplying water along with maintaining and operating the water

¹ See 66 Pa.C.S. §§ 102, 3201, 3202(a).

and sewage infrastructure in most of the City of Pittsburgh. PWSA also manages stormwater that is conveyed both through its combined sewer systems and separate storm sewer systems.

2. The contact information for PWSA’s counsel is as follows:

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3. On March 6, 2020, PWSA filed its base rate case filings, docketed at Docket Nos. R-2020-3017951 (Water) and R-2020-3017970 (Wastewater) (“Rate Case Proceeding”).²

Pursuant to the Rate Case Proceeding, PWSA is asking the Commission to approve a multiyear rate plan to increase its combined water and wastewater rates for 2021 by \$43.4 million and \$12.6 million for 2022. The proposed increase in revenues is the minimum necessary to enable PWSA to appropriately invest in the infrastructure needed to maintain and improve its safety, reliability and customer service levels.

4. On April 16, 2020, the Commission suspended the Rate Case Proceeding for further investigation, so that rates would not go into effect until December 5, 2020, consistent with Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d). It is noted, however, that on March 31, 2020, the Bureau of Investigation and Enforcement (“I&E”) filed a Motion for an

² Simultaneously, PWSA filed a Petition for Consolidation of Water and Wastewater Rate Proceedings and for Authorization to use Combined Water and Wastewater Revenue Requirements. That Petition is pending. Additionally, at the same time, PWSA filed a Petition for Consolidation of the Rate Case Proceeding with its Distribution System Infrastructure Charge Petition filed at Docket No. P-2020-3019019. That Petition is also still pending.

Extension of the Statutory Suspension Period, seeking to extend the suspension period to reflect the time during which the Commission's offices are physically closed due to the COVID-19 pandemic. On April 13, 2020, PWSA filed an Answer to I&E's Motion, opposing an extension of the statutory suspension period. I&E's Motion is pending.

5. On December 20, 2019, before filing the Rate Case Proceeding, PWSA filed the newly-negotiated 2019 Cooperation Agreement with the City of Pittsburgh pursuant to Section 507 of the Public Utility Code, 66 Pa.C.S. §507, docketed at Docket No. U-2020-3015258 ("Section 507 Proceeding").³ In filing the Section 507 Proceeding, consistent with the Joint Petition for Partial Settlement of its Compliance Filing Proceeding (Docket Nos. M-2018-2640802 and M-2018-2640803), PWSA requested that the 2019 Cooperation Agreement be referred to the Office of Administrative Law Judge for a formal on-the-record proceeding. By Secretarial Letter dated January 16, 2020, the Commission extended the period for review of the 2019 Cooperation Agreement until further order.

6. On March 26, 2020, the Commission issued an Opinion and Order ("March 2020 Order") in the Compliance Filing Proceeding. With the exception of certain issues relating to partial replacements of lead service lines, the Commission approved the Joint Petition for Partial Settlement. In the March 2020 Order, the Commission referred the Cooperation Agreement Filing to the OALJ for further proceedings as may be necessary. Pending a review of the 2019 Cooperation Agreement, the Commission directed PWSA to conduct business transactions with

³ The Cooperation Agreement between the City and PWSA, which went into effect on January 1, 1995 and was amended on March 21, 2011, expired on October 3, 2019.

the City on a transactional basis.⁴ While PWSA filed a Petition for Reconsideration of the March 2020 Order on April 10, 2020, it did not seek reconsideration of this directive.

7. The Joint Petition for Partial Settlement in the Compliance Filing Proceeding resolved several issues in connection with the Section 507 Proceeding, including the rights of the parties to raise issues related to its ratemaking aspects in any future base rate proceeding.⁵ The parties also agreed on the following set of principles that should apply to the Section 507 Proceeding: (i) any payments to the City must be just, reasonable and substantiated; (ii) the City and PWSA's relationship should be conducted on an arm's length "business-like" basis; (iii) services provided by the City to PWSA and vice versa should be identified with detailed breakdown and be charged based on the related cost of service; and (iv) PWSA is free to propose a phase-in period or other modifications to otherwise applicable laws, regulations, tariffs, and the 2019 Cooperation Agreement, subject to the rights of other parties to oppose PWSA's proposals.⁶

II. Request for Consolidation of Proceedings

8. For the reasons set forth herein, PWSA respectfully requests that the Rate Case Proceeding and Section 507 Proceeding be consolidated.

9. 52 Pa. Code § 5.81(a) provides that: "The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be

⁴ March 2020 Order at 32.

⁵ Joint Petition for Partial Settlement, III.P.2.

⁶ Joint Petition for Partial Settlement, III.P.5.

consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.”⁷

10. Among the considerations for consolidation are: (a) whether additional issues exist that could cloud the determination of common issues; (b) whether consolidation will reduce litigation costs and decision-making for the parties and the Commission; (c) whether the issues in one proceeding go to the heart of an issue in the other proceeding; (d) whether consolidation will unduly protect a hearing or produce a disorderly or unwieldy record; (e) whether different statutory and legal issues are involved; (f) whether the party with the burden of proof differs in the proceedings; (g) whether consolidation will unduly delay the resolution of one of the proceedings; and (h) whether supporting data in both proceedings will be repetitive.⁸ As the Commission has previously determined, no single consideration, nor group of these considerations, is dispositive of consolidation. Rather, all factors must be evaluated, and a balancing of those favoring and disfavoring consolidation is required.⁹

11. The above-captioned proceedings are interrelated and raise common issues of law and fact. PWSA’s Rate Case Proceeding and Section 507 Proceeding both involve issues concerning the payments made by the City to PWSA and payments made by PWSA to the City for services rendered, and whether the amounts in issue are just and reasonable and in the public interest. Historically, as the owner of the assets, the City did not pay itself for water usage. As

⁷ Cases have been consolidated for adjudication, *Re Middletown Taxi Co.*, 50 Pa. PUC 263 (1976); for hearing, *City of York v. York Telephone and Telegraph Co.*, 43 Pa. PUC 240 (1967); for briefing, *Clepper Farms, Inc. v. Grantham Water Co.*, 41 Pa. PUC 749 (1965); or for all purposes, *Commonwealth of Pennsylvania et al. v. Respond Power LLC*, Docket No. C-2014-2427659 and *Pa. PUC v. Respond Power LLC*, Docket No. C-2014-2438640 (Interim Order dated October 28, 2014)

⁸ *See Pa. Pub. Util. Comm’n v. City of Lancaster Sewer Fund*, Docket No. R-2012-2310366, at p. 3-4 (Second Prehearing Order Nov. 26, 2012) (“*Lancaster Sewer Fund Prehearing Order*”).

⁹ *Id.* at 3.

ownership of the assets transfer and in consideration of PWSA's new obligations under the Public Utility Code, the 2019 Cooperation Agreement is intended to transition toward a more "business-to-business" relationship between these two public entities.

12. Both the Section 507 Proceeding and the Rate Case Proceeding are integral to the process of "reordering the relationship" between PWSA and the City as expressed by the March 2020 Order.¹⁰ The Section 507 Proceeding involves the results of a significant and lengthy negotiation between these two entities wherein the City continues to own (through 2025) the water and wastewater conveyance systems managed by PWSA. As part of the Section 507 Proceeding, a record will be developed to enable the Commission to decide whether the terms of the 2019 Cooperation Agreement are just and reasonable and in the public interest and whether the 2019 Cooperation Agreement reasonably transitions the City, the current owner, to a user/customer, paying the full costs of service. Examining the same data, the Rate Case Proceeding will focus on ratemaking principles, addressing cost allocation issues and the appropriate rates to be charged by the City, as well as the appropriate costs to be paid by PWSA to the City. This review will likewise consider whether PWSA's rates and expenses are just and reasonable and in the public interest. The Section 507 Proceeding and the Rate Case Proceeding are the appropriate vehicles through which an equitable, reasonable and fair final resolution of these matters can comprehensively be achieved. They are so intertwined as to warrant their consolidation.

13. Three specific examples of issues in the 2019 Cooperation Agreement that will implicate both the Section 507 Proceeding and the Rate Case Proceeding are highlighted in PWSA's Petition for Reconsideration filed in the Compliance Plan Proceeding on April 10,

¹⁰ March 2020 Order at 40.

2020. These issues include: (i) usage for metered properties; (ii) a flat fee for unmetered properties; and (iii) costs to install meters (“City Issues”). While the March 2020 Order directed PWSA to “invoice services on a transactional basis,”¹¹ the City Issues are the subject of the 2019 Cooperation Agreement and full resolution requires an examination of cost of service guiding the specific rates that will be charged. As part of the Rate Case Proceeding, PWSA has identified the costs associated with service to City-owned properties and included a proposal to address the anticipated shortfall in payments from the City to cover the projected costs to serve the City. As a result, the information related to costs and potential rate impacts that may be necessary to address concerns of the parties or the Commission about the 2019 Cooperation Agreement is available in the Rate Case Proceeding.

14. Other issues addressed by the 2019 Cooperation Agreement that may have impacts on rates include payments, and the basis for determining those payments, made by PWSA to the City for: (i) participation of eligible PWSA employees in the City’s Pension Plan; (ii) fuel for PWSA vehicles; (iii) City permits and licenses relating to PWSA projects; (iv) vehicle fleet maintenance services; (v) a portion of street sweeping costs; and (vi) any other services and goods. Also relevant to the 2019 Cooperation Agreement is its impact on PWSA’s plans regarding stormwater, as costs that PWSA will recover through a stormwater fee in the future will include any Commission’s approved provisions relating to stormwater in the 2019 Cooperation Agreement.

15. A balancing of the considerations referenced in the *Lancaster Sewer Fund Prehearing Order* supports consolidation of these proceedings. Formal consolidation of the above-captioned proceedings for all purposes is warranted and in the public interest, the interest

¹¹ March 2020 Order at 32.

of the parties and the interest of the Commission. Consolidation of the above-captioned proceedings will promote judicial economy and conserve valuable resources of the parties and the Commission. For example, consolidation for purposes of discovery and hearing will avoid the need for the parties to submit testimony in two different proceedings. Similarly, for purposes of briefing and adjudication, consolidation will avoid the need for two briefs to be filed, two initial decisions to be served and two Commission orders to be entered. Particularly since the Rate Case Proceeding is subject to a statutory suspension period, no delays will occur as a result of consolidation. Thus, consolidation of the above-captioned proceedings is plainly in the public interest. Since the proceedings involve similar issues of fact and law, no reason exists to have them litigated on separate paths, particularly given the need to timely address impacts of the 2019 Cooperation Agreement on PWSA's water and wastewater rates in a fair and orderly manner.

16. If this Petition is granted, PWSA will seek leave to serve Supplemental Direct Testimony addressing the provisions of the 2019 Cooperation Agreement. As PWSA already envisions the need to serve Supplemental Testimony to address issues that were resolved by the Commission's March 2020 Order in the Compliance Proceeding, PWSA does not expect that this additional step would cause any delay in the schedule for the Rate Case Proceedings, which has not yet been developed.

III. Conclusion

WHEREFORE, PWSA respectfully requests that the Commission consolidate the above-captioned proceedings into a single proceeding and take any other action deemed to be in the public interest.

Respectfully submitted,

/s/ Karen O. Moury

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Dated: April 17, 2020

Counsel for
The Pittsburgh Water and Sewer Authority

VERIFICATION

I, Robert Weimar hereby state that I am Executive Director of The Pittsburgh Water and Sewer Authority. I hereby verify that the facts set forth in the foregoing document which I am sponsoring are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C .S. § 4904 (relating to unsworn falsification to authorities).



Dated April 17, 2020

Robert Weimar, Executive Director
The Pittsburgh Water and Sewer Authority