



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

April 20, 2020

**Via Electronic Filing**

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

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

Petition of Pittsburgh Water and Sewer Authority for Approval of Its Long-Term  
Infrastructure Improvement Plan  
Docket Nos. P-2018-3005037 & P-2018-3005039

**I&E Answer in Opposition to the Petition for Reconsideration and/or for  
Supersedeas of the City of Pittsburgh**

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Answer to the  
City of Pittsburgh's Petition for Reconsideration** in the above-captioned proceedings.

Consistent with Paragraph 8 of the Commission's March 20, 2020 Emergency Order at  
Docket No. M-2020-3019262 (Re: Suspension of Regulatory and Statutory Deadlines;  
Modification to Filing and Service Requirements), electronic copies only are being served on all  
active parties of record, as well as the City of Pittsburgh, as evidenced in the attached Certificate  
of Service. If you have any questions, please contact me at (717) 787-8754.

Respectfully,

Gina L. Miller  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 313863  
(717) 787-8754  
[ginmiller@pa.gov](mailto:ginmiller@pa.gov)

GLM/jfm  
Enclosures

cc: Hon. Mark A. Hoyer (*OALJ – PUC Pittsburgh, via email only*)  
Hon. Conrad A. Johnson (*OALJ – PUC Pittsburgh, via email only*)  
Per Certificate of Service

**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                         :

Petition of The Pittsburgh Water and Sewer       :       P-2018-3005037  
Authority for Approval of Its Long Term         :       P-2018-3005039  
Infrastructure Improvement Plan                   :

**ANSWER OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT  
IN OPPOSITION TO  
THE PETITION FOR RECONSIDERATION AND/OR FOR SUPERSEDEAS  
OF THE CITY OF PITTSBURGH**

TO THE HONORABLE COMMISSION:

**I. INTRODUCTION**

**A. The City is not a Party to this Proceeding**

At the outset, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) prefaces its Answer by noting that the City of Pittsburgh (“City”) is not a party to this proceeding. This fact is not subject to dispute, as the City filed a Petition to Intervene in this case on April 9, 2020, which arguably remains pending,<sup>1</sup> but certainly has not been granted. This case was initiated approximately eighteen months ago and has been extensively litigated through discovery, multiple rounds of testimony, evidentiary hearings, briefs

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<sup>1</sup> I&E avers that the City’s Intervention Petition is not properly before the Commission and therefore is not truly pending. Instead, it is moot since this proceeding has concluded and therefore intervention is untimely and unwarranted.

and Exceptions. I&E avers that the City's attempted intervention in this case at this late date must be prohibited because it conflicts with the Commission's regulation that provides that other than for statutory advocates, intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.<sup>2</sup> I&E notes that the City is not a statutory advocate and that the evidentiary hearings in this case concluded on August 21, 2019. Additionally, as I&E will explain in the Answer below, no extraordinary circumstances exist here because the City was apprised on multiple occasions, by letters with verified service from PWSA, that its interests would be implicated in this proceeding. Nonetheless, without waiving its position that the City's Petition to Intervene is untimely and procedurally inappropriate, I&E will address them in its response to the City's Petition to Intervene, which is due on or by April 29, 2020.<sup>3</sup>

Although I&E maintains that a response to the City's instant Petition is not required, without waiving this position, I&E answers it for purposes of completeness and to correct the several false averments it contains. Accordingly, pursuant to 52 Pa. Code § 5.572(e), I&E hereby submits its Answer in Opposition to the Petition for Reconsideration and/or for Supersedeas of the City of Pittsburgh ("City's Petition") of the Commission's March 26, 2020 Order and Opinion ("Final Order")<sup>4</sup> in the above-captioned proceeding filed on April 10, 2020.

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<sup>2</sup> 52 Pa. Code § 5.74, *Filing of petitions to intervene*.

<sup>3</sup> 52 Pa. Code § 5.66, *Answers to petitions to intervene*.

<sup>4</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority Stage 1*, M-2018-2640802 et al., Opinion and Order, (Entered March 26, 2020).

As more fully set forth below, while multiple Compliance Plan notices were served upon the City Solicitor, the City's Petition, signed by the Solicitor, alleges that while the City "may have received the PWSA's Compliance Plan" it would have advocated its position in the case had it been on "formal notice of the intent of the Commission to rule in a fashion that would cause harm to City taxpayers."<sup>5</sup> I&E submits that the City's position is frivolous and strains credulity because it relies upon adoption of the premise that prospective litigants need only defend their interest in adjudicative proceedings when they know in advance that the ultimate ruling will be adverse to their interest. Now, although the City elected not to intervene in this proceeding, it attempts to disturb the outcome because it is dissatisfied with the result. By doing this, the City has successfully dodged any accountability in the underlying case, circumvented any obligation to answer discovery, and failed to develop and defend any evidentiary record. Now, through its Petition, it seeks to overturn key components of the Commission's Final Order by asserting baseless arguments that must be rejected. I&E avers that the Commission must reject the City's meritless claims by either (1) determining that the City's Petition is not properly before the Commission or (2) by determining that the City's Petition alleges insufficient grounds to warrant either reconsideration or supersedeas.

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<sup>5</sup> City Petition, p. 10, Paragraph 34.

## **B. The Commission's Final Order**

In its Final Order, the Commission approved, with slight modification, the Joint Petition for Partial Settlement filed by PWSA, I&E, the Office of Consumer Advocate, the Office of Small Business Advocate, Pittsburgh UNITED and Pennsylvania-American Water Company on September 19, 2019.<sup>6</sup>

Additionally, with respect to the remaining issues reserved for litigation, the Commission ordered that within thirty (30) days of the entry date of its Final Order, PWSA must revise its Compliance Plan consistent with the outcome of the litigated issues in the proceeding, specifically as follows: (1) that the 1995 Cooperation Agreement be terminated, and business transactions conducted with the City of Pittsburgh be required to occur on a transactional basis until a new Cooperation Agreement is reviewed and approved by the Commission; (2) that the Compliance Plan be revised to require the Pittsburgh Water and Sewer Authority to become responsible for the cost of all meter installation in accordance with 52 Pa. Code § 65.7; (3) that the Compliance Plan be revised to require the Pittsburgh Water and Sewer Authority to introduce a flat rate, at minimum the customer charge for the customer's class, for all unbilled customers in its next base rate case, and, as customers are metered, to immediately bill full usage; (4) that the Compliance Plan be revised to eliminate the residency requirement; and (5) that the Compliance Plan be revised to include a single document, similar to the **Appendix A** of the Final Order, setting forth the entirety of

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<sup>6</sup> Final Order at 177-178.

PWSA's lead infrastructure plan, as approved in and consistent with the Final Order.<sup>7</sup>

I&E notes that the litigation outcomes in issues 1 through 4 identified above represented the Commission's adoption of its positions, and that the City did not participate in this litigation.

Additionally, consistent with I&E's litigation position, the Commission determined that its regulations 52 Pa. Code §§ 65.21-65.23, regarding a utility's duty to make line extensions superseded the formula and processes under the Municipal Authorities Act ("MAA"). However, pursuant to 66 Pa. C.S. § 3202(b), the Commission granted PWSA a temporary waiver, of one year from the date of entry of the Final Order, from compliance with 52 Pa. Code §§ 65.21-65.23 regarding a utility's duty to make line extensions. Before or on the expiration date of that one-year period, PWSA was ordered to file for a permanent waiver of the line extension regulations or a supplemental compliance plan detailing how it will revise its processes to be compliant with the line extension regulations.<sup>8</sup>

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<sup>7</sup> Final Order, pp. 179-180.

<sup>8</sup> Final Order at 180. I&E notes that it did not request reconsideration of the Commission's decision to grant PWSA the temporary waiver. Instead, after careful consideration, I&E concluded that the Commission's grant of a waiver is an appropriate resolution that recognizes the authority and applicability of the Public Utility Code and the Commission's regulations, but also simultaneously grants PWSA a reasonable opportunity to either comply or to support the need for a permanent waiver.

### C. Petitions by the City and Parties

As stated above, on April 9, 2020, the City filed a Petition to Intervene in this case. Thereafter, on April 10, 2020, each of the following parties filed a Petition for Reconsideration to the Commission's Final Order: PWSA<sup>9</sup> and UNITED.<sup>10</sup> PWSA's Petition argues for the Commission to (1) either reconsider its decision to eliminate the requirement for its employees to reside in the City of Pittsburgh or delay the elimination; (2) reconsider or clarify its intentions regarding issues related to the City; and (3) either clarify or amend the Commission's modifications to the Joint Petition.<sup>11</sup> UNITED's Petition argues for the Commission to reconsider and/or to provide clarification regarding its modifications to the Joint Petition.<sup>12</sup> Finally, I&E notes that the City, a non-party, filed its Petition on April 10, 2020.<sup>13</sup> The City's Petition requests that the Commission either reconsider its Final Order, or, in the alternative, delay implementation of its Final Order until review of the City and PWSA's 2019 Cooperation Agreement has concluded. I&E submits that each form of the City's requested relief is unsupported and unwarranted.

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<sup>9</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority Stage 1*, M-2018-2640802 et al., PWSA's Petition for Reconsideration, Clarification and/or Amendment of the Commission's March 26, 2020 Final Order, April 10, 2020 (hereinafter "PWSA's Petition").

<sup>10</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority Stage 1*, M-2018-2640802 et al., UNITED's Petition for Reconsideration and Clarification of the Commission's March 26, 2020 Final Order, April 10, 2020 (hereinafter "UNITED's Petition").

<sup>11</sup> PWSA's Petition, pp. 1-3.

<sup>12</sup> UNITED's Petition, pp. 1-2.

<sup>13</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority Stage 1*, M-2018-2640802 et al., Petition for Reconsideration and/or for Supersedeas of the City of Pittsburgh (hereinafter "City's Petition").

For purposes of clarity, I&E takes no position regarding either PWSA or UNITED's requests for reconsideration or clarification regarding the Commission's modifications to the Joint Petition. Additionally, I&E will address the remaining portions of PWSA's Petition in a separate answer. Therefore, while it is I&E's position that the City's Petition is not properly before the Commission and lacks merit, for purposes of completeness only, and without waiver of these positions, I&E submits the following Answer.

## **II. THE CITY FAILS TO ALLEGE GROUNDS THAT WARRANT RECONSIDERATION**

At the outset, the averments alleged in the City's Petition do not meet the requisite standard to warrant reconsideration of the Commission's Order, as the City's arguments that purport to justify relief are untimely and inaccurate. Importantly, “[p]arties. . . cannot be permitted, by a second motion to review and reconsider, to raise the same questions which were specially considered and decided against them.”<sup>14</sup> In this case, the City is not a party, and it has no standing before the Commission to assert arguments regarding questions that it perceived as having been decided against City interests. Here, the City elected not to intervene in this case to represent any interests, and its attempt to now insert itself after the close of the evidentiary record cannot grant it retroactive party status. In fact, it is well-settled that intervenors must take the record as they find it at the time of intervention.<sup>15</sup> Accordingly,

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<sup>14</sup> *Pa. Railroad Co. v. Pa. Pub. Serv. Com'n*, 179 A. 850, 854 (Pa. Super. 1935) (emphasis).

<sup>15</sup> *Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc.*, 2015 WL 2164637, at \*4 (Pa. P.U.C. 2015), citing Final Rulemaking for the Revision of Chapters 1, 3 and 5 of Title 52 of the Pennsylvania Code Pertaining to Practice and Procedure Before the Commission, Docket No. L-00020156, Order (entered Jan. 4, 2006).

even if the City's untimely Petition to Intervene were to be granted, the City will be granted intervention in a case that has had its evidentiary record closed for over six months, prohibiting it from offering any evidence to support its claims.

Aside from the City's failure to attain party status, and even assuming, arguendo, that the arguments it raises in its Petition were valid,<sup>16</sup> they still would not warrant the requested relief. Relief would not be appropriate because PWSA took the liberty of arguing these positions on behalf of the City already; therefore, those arguments were already heard and rejected by this Commission. Reconsideration is not "a second motion to review and reconsider, to raise the same questions which were specifically considered and decided. . . ."<sup>17</sup> On the contrary, reconsideration requires that a petition identify "new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission."<sup>18</sup> As explained in depth below, in all cases, the City's arguments that purport to warrant reconsideration fail the *Duick* standard and therefore do not warrant reconsideration. Additionally, the City provides no authority to support its apparent position that it should be permitted to enter this case after it concluded and attempt to reverse its outcome simply because it is unhappy with the result. Accordingly, as supported in the response below, the City's Petition should be denied.

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<sup>16</sup> I&E does not concede that the City can properly intervene in this case. Additionally, as this Answer demonstrates, the City's arguments are without merit.

<sup>17</sup> *Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553, 559 (1982) (quoting *Pa. Railroad Co. v. Pa. Pub. Serv. Com'n*, 179 A. 850, 854 (Pa. Super. 1935)).

<sup>18</sup> *Id.*

### III. I&E's ANSWER

#### BACKGROUND

1. Admitted.
2. Admitted upon information and belief.
3. Admitted in part, denied in part. Upon information and belief, it is

admitted that the City is currently the owner of the waster and sewer system, consistent with the evidentiary record in this case.<sup>19</sup> By way of further response, the evidentiary record also reveals that PWSA has fulfilled its lease payment obligations to the City, and that the City is now bound to permit PWSA to purchase the assets at issue in 2025 for \$1.<sup>20</sup> It is denied that the City did not have notice of the opportunity to participate in or the subject matters of this proceeding, as the City has been served with, at least, the following forms of notice:

- In accordance with its Settlement obligations in Pa. P.U.C. v. PWSA, R-2018-3002645 et al, PWSA certified service of a letter to Solicitor for the City of Pittsburgh (December 13, 2018). A copy of this letter is attached and incorporated herein as Exhibit A. Among other things, the letter contained in Exhibit A expressly notifies City Solicitor Hilton that the PWSA/City Cooperation Agreement is being reviewed by the Commission in the Compliance Plan case, and provides docket information and information necessary to enable the City's participation in an upcoming Prehearing Conference.

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<sup>19</sup> PWSA St. No. C-2, p. 13.

<sup>20</sup> Id.

- In accordance with its Settlement obligations in Pa. P.U.C. v. PWSA, R-2018-3002645 et al, PWSA certified service of a letter on January 28, 2019 to City Solicitor Hilton. Along with the letter, PWSA provided City Solicitor Hilton with a link to its rate case settlement approved by the Administrative Law Judges, and the settlement indicated that City-related issues would be addressed in the Compliance Plan case.<sup>21</sup>
- In accordance with its Settlement obligations in Pa. P.U.C. v. PWSA, R-2018-3002645 et al PWSA certified service of its Compliance Plan Supplement upon City Solicitor Hilton on February 1, 2019.<sup>22</sup>

Finally, aside from the express notice sent to the City Solicitor, I&E avers that it is likely that the City received information from the PWSA Board during the pendency of this case. Specifically, I&E understands that during the pendency of this case, of the PWSA board members,<sup>23</sup> four were currently or formerly employed by the City or elected representatives of the City. Paul Leger is former Finance Director to the current Mayor; James Turner is former Finance Director, Budget Director, and Chief Administrative Officer for the City; Margaret Lanier is current City Finance Director and Treasurer; and Deborah Gross is a current City Council member.<sup>24</sup>

4. Admitted.
5. Admitted upon information and belief.
6. I&E lacks sufficient information to admit or deny the allegations of this

paragraph; therefore, they are denied.

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<sup>21</sup> <http://www.puc.state.pa.us/pcdocs/1603973.pdf>

<sup>22</sup> <http://www.puc.state.pa.us/pcdocs/1605098.pdf>

<sup>23</sup> In accordance with the City's home rule charter, PWSA Board members are appointed by the Mayor of the City and confirmed by the City Council. Currently, PWSA's Board includes six members. <https://www.pgh2o.com/about-us/board-board-meetings>

<sup>24</sup> Ms. Gross was recently replaced on the PWSA Board with another City Councilmember, Erika Strassburger.

7. I&E lacks sufficient information to admit or deny the allegations of this paragraph; therefore, they are denied.

8. Admitted in part, denied in part. It is admitted only that PWSA and the City are separate entities. It is denied that PWSA is a municipal corporation, as the record in this case establishes that PWSA is a municipal authority.<sup>25</sup> I&E is lacks sufficient information to admit or deny the remaining allegations of this paragraph; therefore, they are denied.

9. I&E lacks sufficient information to admit or deny the allegations of this paragraph; therefore, they are denied.

10. Admitted in part, denied in part. Consistent with the record in this case,<sup>26</sup> it is admitted only that PWSA and the City entered into a Capital Lease Agreement in 1995. I&E lacks sufficient information to admit or deny the remaining allegations of this paragraph; therefore, they are denied.

11. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that any response is deemed to be required, I&E lacks sufficient information to admit or deny the allegations of this paragraph; therefore, they are denied.

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<sup>25</sup> PWSA Compliance Plan, p. 14.

<sup>26</sup> PWSA Compliance Plan, PWSA St. No. C-2, p. 13.

12. Admitted in part, denied in part. To the extent that the allegations in paragraph 12 are consistent with the 1995 Cooperation Agreement, they are admitted. To the extent that the allegations are inconsistent with the 1995 Cooperation Agreement, they are denied.

13. Admitted in part, denied in part. It is admitted that the 2019 Cooperation Agreement purports to be effective as of October 3, 2019. It is denied that the Cooperation Agreement became effective on October 3, 2019 because the Commission has not approved the contract pursuant to 66 Pa. C.S. § 508. By way of further response, the City and PWSA may not contract around PWSA's obligations as a jurisdictional utility.

14. Admitted in part, denied in part. It is admitted that the 2019 Cooperation Agreement purports to be effective as of October 3, 2019. It is denied that the Cooperation Agreement became effective on October 3, 2019 because the Commission has not approved the contract pursuant to 66 Pa. C.S. § 508. By way of further response, the City and PWSA may not contract around PWSA's obligations as a jurisdictional utility.

15. Admitted in part, denied in part. It is admitted that the averments in this paragraph summarize the City's beliefs regarding the 2019 Cooperation Agreement and its opinion of the appropriate venue for the Commission's review, comment, or revision of the Cooperation Agreement. It is denied that the City's beliefs regarding the 2019 Cooperation Agreement are determinative of whether that document was negotiated in an arm's length manner. It is further denied that the City has provided

any basis to dictate the venue in which the Commission may exercise its authority. Finally, it is denied that the Commission reviewed or revised the 2019 Cooperation Agreement as part of this proceeding, as the Commission simply indicated that, consistent with the Public Utility Code, PWSA should conduct business transactions with the on a transactional basis until a new Cooperation Agreement is reviewed and approved by the Commission.<sup>27</sup>

16. The averments contained in this paragraph are statements of the City's conclusions regarding the 2019 Cooperation Agreement to which no response is required. To the extent that any response is determined to be necessary, I&E denies that the City's characterizations are accurate and strict proof of same is required. By way of further response, the City may elect to pursue its arguments regarding the 2019 Cooperation Agreement by pursuing intervention in the open Commission docket at U-2020-3015258 if it wishes to advance its position regarding the 2019 Cooperation Agreement.

17. The averments contained in this paragraph are statements of the City's conclusions regarding the 2019 Cooperation Agreement to which no response is required. To the extent that any response is determined to be necessary, I&E denies that the City's conclusions are accurate and strict proof of same is required. By way of further response, the City may elect to pursue its arguments regarding the 2019 Cooperation Agreement by pursuing intervention in the open Commission docket at

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<sup>27</sup> Final Order at 179.

U-2020-3015258 if it wishes to advance its position regarding the 2019 Cooperation Agreement.

18. The averments contained in this paragraph are statements of the City's conclusions regarding the 2019 Cooperation Agreement to which no response is required. To the extent that any response is determined to be necessary, I&E denies that the City's conclusions are accurate and strict proof of same is required. By way of further response, the City may elect to pursue its arguments regarding the 2019 Cooperation Agreement by pursuing intervention in the open Commission docket at U-2020-3015258 if it wishes to advance its position regarding the 2019 Cooperation Agreement.

19. Denied. I&E is without information sufficient to admit or deny either the City's or PWSA's motivations for "negotiating" the Cooperation Agreement, therefore I&E denies the City's averments regarding such motivations. I&E also denies the City's claim that the majority of PWSA customers are City taxpayers who must "bear the economic burden in one form or another" because this claim conflates the Commission's rate-setting authorities and obligations with the City's role as a tax collector, which is wholly inappropriate and antithetical to the General Assembly's purpose in placing PWSA under the Commission's regulatory authority. Finally, while subsections (a) through (c) of this paragraph appear to summarize the certain Cooperation Agreement terms, I&E denies that these terms are consistent with PWSA's obligations as a jurisdictional utility.

20. To the extent that the allegations in paragraph 20 are consistent with Act 65, they are admitted. To the extent that the allegations are inconsistent with Act 65, they are denied.

21. Admitted in part, denied in part. It is admitted that in response to Act 65, the Commission took steps to carry out new responsibilities. It is denied that the Commission's responsibilities were "perceived;" on the contrary, Act 65 directed the Commission to undertake certain actions consistent with the regulation of water and sewer authorities in cities of the second class.<sup>28</sup>

22. Denied. The City misstates the authority for, the purpose of, and the scope of PWSA's Compliance Plan, which is clearly set forth in Chapter 32 of the Code. The purpose of the Compliance Plan, as set forth by the Pennsylvania General Assembly, direct PWSA to do the following:

[F]ile a compliance plan with the commission which shall include provisions to bring an authority's existing information technology, accounting, billing, collection and other operating systems and procedures into compliance with the requirements applicable to jurisdictional water and wastewater utilities under this title and applicable rules, regulations and orders of the commission. The compliance plan shall also include a long-term infrastructure improvement plan in accordance with Subchapter B of Chapter 13 (relating to distribution systems).<sup>29</sup>

Finally, although I&E is without information sufficient to determine which matters PWSA and the City historically resolved by agreement, I&E denies that addressing

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<sup>28</sup> 66 Pa. C.S. § 3201 et seq.

<sup>29</sup> 66 Pa. C.S. § 3202(b).

PWSA's compliance issues is now in the purview of the Commission and the Commission's authority cannot be circumvented by contract.

23. Denied. The averments contained in this paragraph are statements of the City's beliefs regarding the appropriateness of the scope of this proceeding to which no response is required. To the extent that any response is determined to be necessary, I&E denies that the City's beliefs are warranted or provide an appropriate basis for relief. By way of further belief, the City's claims regarding any consideration of the 2019 Cooperation Agreement in this proceeding belie the notices set forth in I&E's response to Paragraph 3, above, which provides proof that the City was put on express notice that the Cooperation Agreement would be addressed in this case, but it took no position on the matter until after the case concluded.

24. Admitted in part, denied in part. It is admitted that the Commission's regulatory authority extends to the proceedings the City mentioned in this paragraph. It is denied that the Commission's regulatory authority is limited only to the proceedings mentioned.

25. Admitted. By way of further response, aside from PWSA and Intervenors, statutory advocates, including I&E, the Office of the Consumer Advocate, and the Office of the Small Business Advocate, also filed Exceptions and Replies to Exceptions.

26. Admitted.

27. Admitted in part, denied in part. It is admitted that the City filed a Petition to Intervene on April 9, 2020. It is denied that the City is eligible to intervene because its untimely and unsupported Petition conflicts with the Commission's regulation that provides that other than for statutory advocates, intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.<sup>30</sup> The City is not a statutory advocate, evidentiary hearings concluded on August 21, 2019, and no extraordinary circumstances exist because the City has express written notice of this case, including explicit notice that its interests may be implicated. Despite the notices, the City elected to ignore this case until after it concluded in a manner that dissatisfied the City.

28. Admitted in part, denied in part. It is admitted that the enumerated issues were addressed in some capacity in the Commission's Opinion and Order. It is denied that the issues "effect" the City because the City elected not to provide any evidence during the pendency of the case in order to substantiate this claim.

29. Admitted in part, denied in part. To the extent that the averments of this paragraph are consistent with the Commission's Opinion and Order of March 26, 2020, they are admitted. To the extent that the averments are inconsistent with the Commission's Opinion and Order of March 26, 2020, they are denied.

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<sup>30</sup> 52 Pa. Code § 5.74, *Filing of petitions to intervene*.

30. Admitted in part, denied in part. It is admitted only that the City is requesting reconsideration and a stay of proceedings. It is denied that the City's requests should be granted, because as explained in the above paragraphs of this Answer, which are herein incorporated by reference, the City has not met the standard necessary to warrant the requested relief, and its willful disregarding of this proceeding during its pendency should not shield it from consequences that it deems unfavorable now. To permit this would prejudice all parties, the Commission, and the integrity of all Commission proceedings moving forward so as to encourage future litigants to lie in wait during comprehensive on-the-record proceedings and to emerge with unfounded claims after the case has concluded in a manner that is dissatisfactory.

31. Admitted in part, denied in part. To the extent that the averments of this paragraph are consistent with the authorities cited, they are admitted. To the extent that the averments are inconsistent with the authorities cited, they are denied.

32. Denied. As explained in the above paragraphs of this Answer, which are herein incorporated by reference, the City elected not to participate in this case and has not met any of the standards necessary to warrant a grant of the relief it requests. By way of further response, the *Pennsylvania Public Utility v. West Penn Power* case that the City cites in Paragraph 31 expressly speaks to arguments raised by *parties* and the City is not a party to this proceeding.

33. Denied. Although the Commission's Final Order reiterates the many arguments that PWSA made on behalf of concerns for the City's financial position<sup>31</sup>, it is denied that the Commission has adopted PWSA position or determined that the City will be financially harmed. Instead, the Commission's Final Order makes it clear that the City's financial interests, which the City chose not to address in this case, cannot be elevated above ratepayers' interest:

[P]rivate consumers should not be compelled to bear any part of the cost of the service rendered to Pittsburgh except as they contribute as taxpayers to the general fund of the City. The City is a consumer the same as any of its residents who patronize the PWSA and is not entitled to any privilege as to rates. As each City-owned building and property is metered and duly billed for its usage, the taxpayer, rather than the non-City consumers of the PWSA, will then be appropriately responsible for the water and wastewater service rendered to the City. Furthermore, as I&E pointed out, there is no evidence in the record indicating that the City is not able to take responsibility for, and/or appropriately budget for, the costs the PWSA incurs to provide services to the City; nor has the City elected to participate, despite having received notice of this proceeding and a copy of the PWSA's Compliance Plan, which implicated issues of City interest, and being advised in writing of the opportunity to do so.<sup>32</sup>

34. Admitted in part, denied in part. It is admitted, upon information and belief, that the City received notice of PWSA's Compliance Plan. By way of further response, I&E herein incorporates, by reference, its response to Paragraph 3 above which details the notices for which PWSA certified service of notification upon the City. It is denied that the City was entitled to receive notice of the Commission's rulings in advance

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<sup>31</sup> Final Order, pp. 46-48, 54-55.

<sup>32</sup> Final Order at 60.

of the proceeding that would develop a record for their basis. On the contrary, the City's apparent position that it was entitled to know whether its interests would be adversely impacted by a Commission ruling before deciding to defend them by participating in this proceeding is frivolous, ethically irresponsible, and meritless.

35. Denied. I&E's position regarding PWSA's loss of revenue to City interests is not merely alleged in this proceeding, but it has been amply supported in the evidentiary record underlying the Commission's Final Order. The City willfully elected not to support its apparent position to the contrary, despite acknowledging its awareness of this proceeding, and despite the notifications it received as summarized in Paragraph 3.

36. The allegations of this paragraph consist of the City's unsupported conclusions regarding the 2019 Cooperation Agreement to which no response is required. To the extent that a response is deemed to be required, the City's allegations regarding the 2019 Cooperation Agreement are denied. If the City wishes to argue the merits of the 2019 Cooperation Agreement, it can pursue them in the pending Section 507 case for which it alleges it is "now in the process of intervening in. . . ." <sup>33</sup> By way of final response, to the extent that the Commission's Final Order in this case has made compliance determinations regarding any aspect of PWSA's operations that may be implicated in the 2019 Cooperation Agreement, those determinations must not be disturbed in the context of any other proceeding.

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<sup>33</sup> City Petition, p. 10, footnote 2.

37. The allegations of this paragraph consist of the City's unsupported conclusions regarding the 2019 Cooperation Agreement to which no response is required. To the extent that a response is deemed to be required, the City's allegations regarding the 2019 Cooperation Agreement are denied. If the City wishes to argue the merits of the 2019 Cooperation Agreement, it can pursue them in the pending Section 507 case for which it alleges it is "now in the process of intervening in. . . ." <sup>34</sup> By way of further response, to the extent that the Commission's Final Order in this case has made compliance determinations regarding any aspect of PWSA's operations that may be implicated in the 2019 Cooperation Agreement, those determinations must not be disturbed in the context of any other proceeding.

38. Admitted in part, denied in part. It is admitted only that the Commission's Final Order rejected the "phased in" approach outlined in this paragraph. The remaining averments of this paragraph do not require a response because they consist solely of the City's understanding of the phased in approach and its allegations regarding the sufficiency of evidence in this case. To the extent that any response to these averments are deemed to require a response, I&E admits that the City's purported understanding of the phase in approach is consistent with PWSA's description of the approach in the record, but denies that the Commission failed to quantify and balance the services that PWSA receives from the City. Instead, the record reveals that because PWSA failed to

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<sup>34</sup> City Petition, p. 10, footnote 2.

produce detailed invoices for City services alleged, the value of those services could not be quantified.<sup>35</sup>

39. Admitted in part, denied in part. To the extent that the averments of this paragraph are consistent with the Commission's Final Order, they are admitted. To the extent that the averments are inconsistent with the Commission's Final Order, they are denied.

40. Denied. Although the City elected not to participate in this case and now has no valid basis for the allegations made in this paragraph, PWSA largely advocated on behalf of the City to advance the allegations made in this paragraph.<sup>36</sup> Therefore, the Commission is deemed to have considered and rejected these allegations,<sup>37</sup> and not failed to take them into account as alleged here.

41. Admitted in part, denied in part. It is admitted that the City requests and asserts that is entitled to reconsideration of the March 26, 2020 Order. It is denied that City is entitled to the relief as requested.

42. The allegation contained in this paragraph is a conclusion to which no response is required. To the extent that a response is deemed to be required, I&E denies that the City and PWSA are meticulously separating themselves, as evidenced by fact that the City's Petition seeks to continue the disparate rate treatment, onerous contract terms,

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<sup>35</sup> Final Order at 26.

<sup>36</sup> Final Order, pp. 46-48, 54-55.

<sup>37</sup> Final Order at 14.

and operationally-hindering policies that the Commission has determined to be non-compliant with PWSA's jurisdictional obligations.

43. Admitted in part, denied in part. To the extent that the averments of this paragraph are consistent with the Commission's Final Order, they are admitted. To the extent that the averments are inconsistent with the Commission's Final Order, they are denied.

44. The allegation contained in this paragraph is a conclusion to which no response is required. To the extent that a response is deemed to be required, I&E denies that the Commission "reviewed" the 2019 Cooperation Agreement in this case. Instead, the Commission simply indicated that, consistent with the Code, PWSA should conduct business transactions with the on a transactional basis until a new Cooperation Agreement is reviewed and approved by the Commission.<sup>38</sup> By way of further response, I&E avers that the 2019 Cooperation Agreement will soon be the subject of a litigated proceeding. Consistent with the City's representation, it may choose to seek intervention in the litigated proceeding<sup>39</sup> and assert its positions in that forum. Nonetheless, I&E asserts that the City is not permitted to contract around PWSA's obligations as a jurisdictional utility; therefore, to the extent that any of the Commission's compliance determinations in this case conflict with any terms in the 2019 Cooperation Agreement, there is no basis to overturn the Commission's determination.

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<sup>38</sup> Final Order at 179.

<sup>39</sup> City's Petition, p. 10, footnote 3.

45. Admitted in part, denied in part. It is admitted that the City believes that the Commission's determination regarding PWSA's residency requirement is incorrect and represents the overstep of the Commission's bounds. It is denied that the City's beliefs are accurate, because they are demonstrably inaccurate. The Commission is empowered to "interfere" with PWSA's residency requirement where it represents an abuse of managerial discretion and the public interest has been adversely affected.<sup>40</sup> That standard was met in this case, and the City's failure to participate in no way diminishes the evidentiary record or the Commission's determination regarding the residency requirement.

46. Admitted in part, denied in part. It is admitted that the City requests reconsideration of the Commission's Final Order and deferment of certain issues to other proceedings. It is denied that reconsideration is warranted or that any grounds exist to disturb any of the Commission's determinations in this case by subject them to re-litigation in another proceeding. To the contrary, such action would waste the resources of the parties to this proceeding and the Commission, as well as PWSA's ratepayers, and compromise PWSA's operations by permitting non-compliance to continue unabated in the interim. Such an outcome is inconsistent with the Commission's obligations as set forth in Chapter 32 of the Code.

47. Admitted upon information and belief.

48. Admitted upon information and belief.

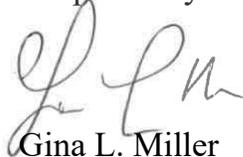
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<sup>40</sup> *Metropolitan Edison Company v. Pa. PUC*, 437 A.2d 76 (Pa Cmwlth. 1981).

#### IV. CONCLUSION

WHEREFORE, for the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that the Commission either (1) determine that the City's Petition for Reconsideration and/or for Supersedeas is not properly before the Commission or (2) determine that the City's Petition alleges insufficient grounds to warrant either reconsideration or supersedeas.

Respectfully submitted,



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Prosecutor  
Attorney ID No. 313863

John M. Coogan  
Prosecutor  
Attorney ID No. 313920

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor West  
Harrisburg, Pennsylvania 17120

Dated: April 20, 2020

# **I&E**

## **Exhibit A**



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www.eckertseamans.com

Carl R. Shultz  
717.255.3742  
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December 13, 2018

Yvonne S. Hilton, Esquire  
Solicitor for the City of Pittsburgh  
414 Grant Street – City County Building  
3rd Floor – Law Department  
Pittsburgh PA 15219

RE: Pennsylvania Public Utility Commission, et al. v. Pittsburgh Water and Sewer Authority; Docket Nos. R-2018-3002645 and R-2018-3002647, et al. Notice to the City of Pittsburgh

Dear Ms. Hilton:

Pursuant to the Settlement Agreement with the Pennsylvania Public Utility Commission (“PUC” or “Commission”),<sup>1</sup> The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) agreed to formally notify the City of Pittsburgh (“City”) that the Cooperation Agreement<sup>2</sup> is being reviewed by the Commission in PWSA’s Compliance Plan Filing proceeding,<sup>3</sup> and that PWSA’s Long Term Infrastructure Improvement Plan (“LTIIIP”) Filing<sup>4</sup> is pending with the Commission.

<sup>1</sup> The Settlement Agreement was reached by certain active parties (collectively, the “Joint Petitioners”) in the July 2, 2018 base rate increase filing. That settlement must be reviewed and approved by the Commission.

<sup>2</sup> The Cooperation Agreement between PWSA and the City is attached as Appendix B to the Compliance Plan. See footnote 3.

<sup>3</sup> PWSA’s Compliance Plan filing is at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater). The Compliance Plan filing consists of six documents:

(1) PWSA’s Petition for approval of its Compliance Plan which can be found at:  
<http://www.puc.state.pa.us/pcdocs/1587752.pdf>;

(2) PWSA’s Compliance Plan which can be found at: <http://www.puc.state.pa.us/pcdocs/1587758.pdf>;

(3) Attachment 1 to the Compliance Plan which can be found at:  
<http://www.puc.state.pa.us/pcdocs/1587760.pdf>

(4) Appendix A (copy of PWSA – Focusing on the Future) to the Compliance Plan which can be found at:  
<http://www.puc.state.pa.us/pcdocs/1587762.pdf>

(5) Appendix B (copy of Cooperation Agreement) to the Compliance Plan which can be found at:  
<http://www.puc.state.pa.us/pcdocs/1587764.pdf>

(6) Appendix C (copy of LTIIIP) to the Compliance Plan which can be found at:  
<http://www.puc.state.pa.us/pcdocs/1587756.pdf>

<sup>4</sup> PWSA’s LTIIIP filing is at Docket Nos. P-2018-3005037 (water) and P-2018-3005039 (wastewater). The LTIIIP filing consists of two documents:

(1) PWSA’s Petition for Approval of the LTIIIP can be found at:  
<http://www.puc.state.pa.us/pcdocs/1587766.pdf>.

Yvonne S. Hilton, Esquire  
Solicitor for the City of Pittsburgh

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As part of the Settlement Agreement,<sup>5</sup> PWSA agreed to serve the City with a copy of PWSA's Compliance Plan Filing and PWSA's LTIIP Filing. Physical copies are enclosed. Additional public documents associated with the Compliance Plan and LTIIP can be accessed at the following links on the Commission's website:<sup>6</sup>

- **Compliance Plan:**
  - **Water (Docket No. M-2018-2640802):**  
[http://www.puc.state.pa.us/about\\_puc/consolidated\\_case\\_view.aspx?Docket=M-2018-2640802](http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=M-2018-2640802)
  - **Wastewater (Docket No. M-2018-2640803):**  
[http://www.puc.state.pa.us/about\\_puc/consolidated\\_case\\_view.aspx?Docket=M-2018-2640803](http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=M-2018-2640803)
  
- **LTTIP:**
  - **Water (P-2018-3005037):**  
[http://www.puc.state.pa.us/about\\_puc/consolidated\\_case\\_view.aspx?Docket=P-2018-3005037](http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=P-2018-3005037)
  - **Wastewater (P-2018-3005039):**  
[http://www.puc.state.pa.us/about\\_puc/consolidated\\_case\\_view.aspx?Docket=P-2018-3005039](http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=P-2018-3005039)

Please note the following: (a) a Prehearing Conference is scheduled in PWSA's Compliance Plan for Thursday, December 20, 2018 at 10:00 a.m.<sup>7</sup> The assigned Administrative Law Judges will preside from a 2nd Floor Hearing Room, Piatt Place, Suite 220, 301 Fifth Avenue, Pittsburgh, Pennsylvania 15222. Parties and representatives may appear in person at the location above or

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(2) PWSA LTIIP can be found at: <http://www.puc.state.pa.us/pcdocs/1587767.pdf>.

<sup>5</sup> Settlement at ¶ III.G.a.i.(c).(3). The Settlement is available at: <http://www.puc.state.pa.us/pcdocs/1596546.pdf>. The exhibits to the settlement are at: PWSA Exhibit 1, <http://www.puc.state.pa.us/pcdocs/1596548.pdf>; PWSA Exhibit 1a, <http://www.puc.state.pa.us/pcdocs/1596550.pdf>; PWSA Exhibit 2, <http://www.puc.state.pa.us/pcdocs/1596552.pdf>; and PWSA Exhibits 2a and 3, <http://www.puc.state.pa.us/pcdocs/1596554.pdf>.

<sup>6</sup> The general search page on the Commission's website can be found at: [http://www.puc.state.pa.us/about\\_puc/search\\_results.aspx](http://www.puc.state.pa.us/about_puc/search_results.aspx).

<sup>7</sup> PreHearing Order, Docket Nos. M-2018-2640802 and M-2018-2640803, which is available at: <http://www.puc.state.pa.us/pcdocs/1597316.docx>.

Yvonne S. Hilton, Esquire  
Solicitor for the City of Pittsburgh

December 13, 2018  
Page 3

by telephone;<sup>8</sup> and (b) PWSA has agreed (as part of the Settlement<sup>9</sup>) to file a motion to consolidate PWSA's Compliance Plan and LTIIP.

In addition, it should also be noted that to the extent that PWSA revises, supplements, or re-files its Compliance Filing and/or LTIIP Filing, PWSA has agreed (as part of the Settlement Agreement) to serve the City with a copy of such filings at the same time that other parties are served and to include the City on the certificate of service that PWSA must file with the Commission.

Copies of this letter are being served in accordance with the attached Certificate of Service.

If you have any questions, please contact either me or Dan Clearfield (717.237.7173; dclearfield@eckertseamans.com). Thank you.

Sincerely,



Carl R. Shultz

CRS/jls  
Enclosure

cc: Rosemary Chiavetta, Secretary w/out enc.  
Hon. Mark Hoyer w/out enc.  
Hon. Conrad Johnson w/out enc.  
Cert. of Service w/out enc.

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<sup>8</sup> *Id.* See also Prehearing Conference Notice, Docket Nos. M-2018-2640802 and M-2018-2640803, which is available at: <http://www.puc.state.pa.us/pcdocs/1596734.docx>. The parameters for the Compliance Plan proceeding were established in Secretarial Letters issued on September 26, 2018 (<http://www.puc.state.pa.us/pcdocs/1587126.docx>) and November 27, 2018 (<http://www.puc.state.pa.us/pcdocs/1595705.docx>), at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater).

<sup>9</sup> Settlement at ¶ III.H.1.

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the foregoing Notification Letter, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa.

Code Section 1.54.

**Via Email Only**

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Dated: December 13, 2018

  
\_\_\_\_\_  
Carl R. Shultz, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

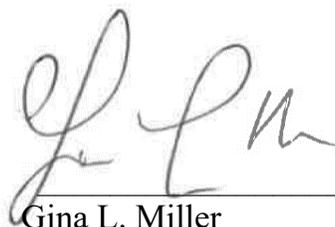
Implementation of Chapter 32 of the Public	:	M-2018-2640802
Utility Code Regarding Pittsburgh Water and	:	M-2018-2640803
Sewer Authority – Stage 1	:	

Petition of The Pittsburgh Water and Sewer	:	P-2018-3005037
Authority for Approval of Its Long Term	:	P-2018-3005039
Infrastructure Improvement Plan	:	

**VERIFICATION**

I, Gina L. Miller, Prosecutor of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, hereby state that the facts set forth 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: April 20, 2020



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Gina L. Miller  
Prosecutor  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor West  
Harrisburg, PA 17120

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Petition of Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan : Docket Nos. P-2018-3005037  
: P-2018-3005039  
:

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Answer to the City of Pittsburgh's Petition for Reconsideration**, dated April 20, 2020 in the manner and upon the persons listed below:

**Served via Electronic Mail Only**

Honorable Mark A. Hoyer  
Honorable Conrad A. Johnson  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
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Pittsburgh, PA 15222

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Gina L. Miller  
Prosecutor  
PA Attorney ID No. 313863