



COMMONWEALTH OF PENNSYLVANIA

April 20, 2020

E-FILED

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 and Petition of The Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan / Docket Nos. M-2018-2640802, M-2018-2640803 and P-2018-3005037, P-2018-3005039

Dear Secretary Chiavetta:

Enclosed please find the Answer and Verification, on behalf of the Office of Small Business Advocate (“OSBA”), to the Petition of Pittsburgh Water and Sewer Authority for Reconsideration, Clarification and/or Amendment of the Commission’s March 26, 2020 Final Order, 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: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the Public	:	Docket No.	M-2018-2640802 (water)
Utility Code Regarding Pittsburgh Water and	:		M-2018-2640803 (wastewater)
Sewer Authority – Stage 1	:		

Petition of The Pittsburgh Water and Sewer	:	Docket No.	P-2018-3005037 (water)
Authority for Approval of Its Long-Term	:		P-2018-3005039 (wastewater)
Infrastructure Improvement Plan	:		

**ANSWER OF SMALL BUSINESS ADVOCATE TO THE PETITION OF THE
PITTSBURGH WATER AND SEWER AUTHORITY FOR RECONSIDERATION,
CLARIFICATION AND/OR AMENDMENT OF THE COMMISSION’S MARCH 26,
2020 FINAL ORDER**

Pursuant to 52 Pa. Code §5.61 and 52 Pa. Code § 5.572(e), the Office of Small Business Advocate (“OSBA”) hereby answers the Petition of the Pittsburgh Water and Sewer Company (“PWSA” or the “Authority”) for Reconsideration, Clarification and/or Amendment of the Commission’s March 26, 2020 Final Order (“*Petition for Reconsideration*”) filed with the Pennsylvania Public Utility Commission (“Commission”) on April 10, 2020, and avers the following in support thereof:

I. INTRODUCTION

The first unnumbered paragraph in this section cites the legal authority under which PWSA files its *Petition for Reconsideration*. The OSBA admits that the cited authority supports PWSA’s right to file its *Petition for Reconsideration*. The OSBA is without information or knowledge sufficient to form a belief as to the truth of whether PWSA appreciates the Commission’s review or whether PWSA is committed to moving forward with the terms of the *Joint Petition for Partial Settlement* (“*Partial Settlement*”). The remaining averments in the first unnumbered paragraph constitute a prayer for relief to which no response is required.

The second unnumbered paragraph in this section outlines that PWSA first requests the Commission to reconsider its decision to eliminate the residency requirement for PWSA's employees to live in the City of Pittsburgh ("City"). This is a prayer for relief to which no response is necessary. The remaining averments set forth legal arguments as to why PWSA believes its requested relief is appropriate, to which no response is necessary. To the extent a response is necessary, the OSBA denies such relief is appropriate, as the Commission made its determination based on sound legal precedent and principles, and, correctly determined that it may intervene in PWSA's management decisions because continuation of the residency requirement is an abuse of managerial discretion which adversely impacts the public interest.

The third unnumbered paragraph in this section sets forth PWSA's legal argument that no evidence was presented to link PWSA's residency requirement to a failure to provide adequate and efficient service, to which no response is necessary. To the extent a response is necessary, the Commission determined that substantial evidence had been presented in this case, mainly from PWSA's own witnesses, to demonstrate that PWSA's residency requirement impedes the Authority from providing adequate and efficient service, preventing it from complying with 66 Pa. C.S. § 1501.

The fourth unnumbered paragraph in this section sets forth a prayer for relief to which no response is necessary.

The fifth unnumbered paragraph in this section sets forth PWSA's prayer for relief for reconsideration/clarification of unmetered issues, to which no response is necessary. The remaining averments in the fifth unnumbered paragraph set forth PWSA's legal argument in support of its prayer for relief, to which no response is necessary. To the extent a response is necessary, PWSA's request for reconsideration/clarification of unmetered issues should be

denied. As explained *infra*, the Commission properly ruled on these issues in the Compliance Plan proceeding with the objective of bringing PWSA into further compliance with the Pennsylvania Public Utility Code and Regulations. The Commission did consider that a Section 507 Proceeding and base rate proceeding for PWSA were on the horizon, yet correctly determined that these unmetered issues should be resolved based on the evidence presented in the fully developed record for the Compliance Plan proceeding. PWSA had the opportunity to fully litigate these unmetered issues in the Compliance Plan proceeding and should be prohibited from re-litigating these issues in subsequent PWSA-related proceedings.

The sixth unnumbered paragraph in this section sets forth a prayer for relief to which no response is necessary.

The seventh unnumbered paragraph in this section sets for a prayer for relief to which no response is necessary.

II. BACKGROUND

1. Admitted.
2. Admitted.
3. Admitted. By way of further response, the *Partial Settlement* is a written document and speaks for itself.
4. Admitted. By way of further response, the Recommended Decision (“RD”) is a written document and speaks for itself.
5. Admitted. By way of further response, the March 26, 2020 Final Order (“*Final Order*”) is a written document and speaks for itself.

III. LEGAL STANDARDS FOR RECONSIDERATION

6. Admitted. By way of further response, 66 Pa. C.S. §§ 703(f), (g) and 52 Pa. Code § 5.572 speak for themselves.

7. Admitted in part, denied in part. By way of further answer, it is admitted that in *Philip Duick et al. v. Pennsylvania Gas and Water Company*, Docket No. C-R0597001 (Order entered December 17, 1982), 1982 Pa. PUC LEXIS 4, 56 Pa. PUC 553 (1982), the Commission held:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. . . . What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Duick, 1982 Pa. PUC LEXIS 4, at *11-*13. By way of further answer, in *Pennsylvania Public Utility Commission v. Jackson Sewer Corporation*, 2001 Pa. PUC LEXIS 44, the Commission also stated:

Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances.

Jackson Sewer, 2001 Pa. PUC LEXIS 44, at *6.

The additional averments by PWSA in Paragraph 7 constitute a legal argument, to which no response is necessary. To the extent that a response is required, the averments are denied.

IV. REQUEST FOR RECONSIDERATION OF TWO LITIGATED ISSUES--- RESIDENCY AND CITY OF PITTSBURGH UNMETERED ISSUES

8. Admitted.

9. Admitted. By way of further answer, 66 Pa. C.S. § 1501 speaks for itself.

10. Admitted in part, denied in part. It is admitted that the Commission's Bureau of

Investigation and Enforcement (“I&E”) argued that PWSA’s residency requirement is incompatible with PWSA’s duty under Section 1501 as it “compromises [PWSA’s] ability to ensure and maintain the provision of adequate, efficient, safe, reliable, and reasonable service.”¹ It is further admitted that I&E argued that, “The undisputed practical reality of PWSA’s residency requirement is that it produces *at least an estimated \$2 million in additional annual costs*”² (emphasis added) and “no party has disputed I&E’s position that the increased costs, estimated to be \$2 million annually, that PWSA’s ratepayers are shouldering to fund its residency requirement are imprudent, unreasonable costs that result in the type of ‘unlawful taxation on customers’ that the Commission must prohibit.”³

It is denied that I&E presented no evidence of a failure of PWSA to provide adequate and efficient service as a result of the residency requirement. Rather, I&E presented, analyzed, and argued that PWSA’s own witnesses provided evidence that the residency requirement impeded PWSA from providing adequate and efficient service.⁴ In support of this argument, I&E pointed to the statements of PWSA witness Ms. Lestitian and Mr. Weimar, who testified “that PWSA’s residency requirement negatively impacts PWSA’s ability to hire qualified trade staff, including plumbers, welders, electricians, and mechanics who are necessary to address daily operational needs.”⁵

11. Admitted in part, denied in part. It is admitted that the Administrative Law Judges

¹ Main Brief of the Bureau of Investigation and Enforcement (“I&E M.B.”), at p. 61.

² I&E M.B., at p. 59.

³ I&E M.B., at p. 62-63.

⁴ See I&E M.B., at p. 63-65.

⁵ I&E M.B., at p. 64. See I&E Statement No. 2, at p. 38; I&E Exhibit No. 2, Sch. 7, at p. 2; PWSA Statement No. C-1, at p. 23; PWSA Statement No. C-2, at p. 16, 32.

(“ALJs”) recommended in the *RD* that the Commission decide that it lacks the power to interfere with PWSA’s residency requirement. By way of further answer, the *RD* is a written document and speaks for itself.

It is admitted that, in reaching their recommendation, the ALJs relied on the Pennsylvania Supreme Court decisions cited by PWSA; however, the ALJs did so only insofar as these decisions were cited in *Metropolitan Edison Company v. Pa. Pub. Util. Comm’n*, 62 Pa. Cmwlth. 460, 437 A.2d 76 (1981), which is the case law upon which the ALJs based their decision.⁶ Importantly, the *Metropolitan Edison Company* case stands for the proposition that if there has been an abuse of managerial discretion, and the public has been adversely affected thereby, then the Commission is empowered to intervene in the management of a utility. *Metropolitan Edison Company*, 62 Pa. Cmwlth. At 466-467; 437 A.2d at 80. The Commission, in its March 26, 2020 Opinion (“*Opinion*”), correctly determined that:

[B]ased on the record evidence, we find that the continuation of the residency requirement is an abuse of managerial discretion and will adversely affect the public interest for the reasons discussed below....In sum, it has been demonstrated in this proceeding, in large part through the PWSA’s own admission, that the residency requirement results in a lack of adequate employees in the PWSA’s workforce and a lack of reasonable levels of redundancy among the PWSA’s workforce. These results show that if the residency requirement was permitted to be implemented in the Compliance Plan, it would appear to frustrate and seriously impede the PWSA’s ability to comply with Section 1501 of the Code.⁷

As a result, the Commission correctly directed PWSA to remove its residency requirement from its Compliance Plan.⁸

12. Admitted. By way of further answer, the Commission, citing to *Metropolitan Edison*

⁶ See *RD*, at p. 162-163.

⁷ *Opinion*, at p. 81.

⁸ *Opinion*, at p. 83.

Company, correctly determined that it was empowered to intervene in the management of PWSA because the continuation of the residency requirement would be an abuse of managerial discretion that would adversely affect the public interest.⁹

13. Denied. The ALJs relied on the *Metropolitan Edison Company v. Pa. Pub. Util. Comm'n*, 62 Pa. Cmwlth. 460, 437 A.2d 76 (1981) decision in reaching their recommendation.¹⁰ While the *Metropolitan Edison Company* case contains internal citations to Pennsylvania Supreme Court cases, it also stands for the proposition that if there has been an abuse of managerial discretion, and the public has been adversely affected thereby, then the Commission is empowered to intervene in the management of a utility.¹¹ The Commission cites to the *Metropolitan Edison Company* case¹², as well as numerous other supporting cases, in reaching its decision to direct PWSA to remove its residency requirement from its Compliance Plan because continuing the residency requirement would be an abuse of managerial discretion that adversely impacts the public.¹³

14. Admitted in part, denied in part. It is admitted that in *Coplay Cement Manufacturing Co. v. Public Service Commission* the Pennsylvania Supreme Court stated “It was not intended by the legislature that the commission should be a board of managers to conduct and control the affairs of public service companies,” although the quote continues to read, “but it was meant that where certain of their powers and obligations had intimate relation to the public through fairness, accommodation or convenience, the commission should have an inquisitorial and corrective authority to regulate and control the utility.”¹⁴ It is denied that the Commission lacks power to

⁹ *Opinion*, at p.81.

¹⁰ *See RD*, at p. 162-163.

¹¹ *Metropolitan Edison Company*, 62 Pa. Cmwlth. At 466-467; 437 A.2d at 80.

¹² *Opinion*, at p. 80, 83.

¹³ *Opinion*, at p.79-84.

¹⁴ 271 Pa. 58, 61, 114 A.2d 649 (1921).

interfere with the management of a utility. Where the evidence demonstrates an abuse of managerial discretion and the public interest has been adversely impacted, the Commission may intervene.¹⁵

15. Admitted in part, denied in part. It is admitted that the language quoted by PWSA in citing *Northern Pennsylvania Power Co. v. Pa. Util. Pub. Comm'n*, 333 Pa. 265, 268, 5 A.2d 133 (1939), is accurate. By way of further answer, the *Northern Pennsylvania Power Co.* decision speaks for itself.

It is denied that the Commission failed to consider whether PWSA's residency requirement adversely impacts the public interest. To the contrary, the Commission determined that the continuation of the residency requirement would result in a lack of adequate employees in the PWSA's workforce and a lack of reasonable levels of redundancy among the PWSA's workforce thereby frustrating and seriously impeding PWSA's ability to comply with 66 Pa. C.S. § 1501.¹⁶ While the Commission determined that the evidence to support its findings came primarily from PWSA's admissions¹⁷, I&E presented, analyzed, and argued that PWSA's own witnesses provided evidence that the residency requirement impeded PWSA from providing adequate and efficient service.¹⁸

16. Admitted in part, denied in part. It is admitted that the language quoted by PWSA in citing *Southwestern Bell Tel. Co. v. Pub. Serv. Com.*, 262 U.S. 276, 289 (1923), is accurate. By way of further answer, the *Southwestern Bell* decision speaks for itself.

¹⁵ *Metropolitan Edison Company*, 62 Pa. Cmwlth. At 466-467; 437 A.2d at 80.

¹⁶ *Opinion*, at p. 81.

¹⁷ *Opinion*, at p. 81.

¹⁸ See I&E M.B., at p. 63-65.

It is denied that the Commission overlooked the general principle that “it is not within the province of the Commission to interfere with the management of a utility”¹⁹ as it explicitly discusses its acknowledgment of the “management discretion doctrine.”²⁰ Nevertheless, the Commission properly found that there are exceptions to this general principle/the “management discretion doctrine,” specifically that if there has been an abuse of managerial discretion, and the public has been adversely affected thereby, then the Commission is empowered to intervene in the management of a utility.²¹ The Commission properly found the evidence in this case supports Commission intervention because continuation of the residency requirement is an abuse of managerial discretion that will adversely affect the public.

17. Admitted in part, denied in part. It is admitted that *Bell Telephone Co. of Pa. v. Driscoll*, 343 Pa. 109, 118-119, 21 A.2d 912 (1941), reiterated that the Commission is not normally empowered to manage the business of a public utility. It is denied that the Commission’s directive for PWSA to eliminate the residency requirement from its Compliance Plan is prohibited. The Commission can properly direct PWSA to remove the residency requirement from its Compliance Plan because the Commission has found the continuation of the residency requirement is an abuse of managerial discretion and will adversely affect the public interest.

18. Denied. Reconsideration is not warranted as the Commission clearly considered and discussed the “management discretion doctrine.”²² The Commission, citing to *Metropolitan Edison Company*, appropriately determined that it is empowered to intervene with PWSA’s management decision to continue the residency requirement because the continuation of the

¹⁹ *Opinion*, at p. 79.

²⁰ *Opinion*, at p. 79.

²¹ *Metropolitan Edison Company*, 62 Pa. Cmwlth. At 466-467; 437 A.2d at 80.

²² *Opinion*, at p. 79.

residency requirement would be an abuse of managerial discretion that would adversely affect the public interest.²³

19. Denied. *Metropolitan Edison Company* held that “if there has been an abuse of managerial discretion, and the public interest has been adversely affected thereby, then the Commission is empowered to intervene”²⁴ in the management of a utility. This ruling is not limited to cases where rates are at issue; if the Commonwealth Court intended such a limitation, it would have so specified in its decision. Rather, the Commonwealth Court created a two-prong analysis where the second prong requires examination as to whether the public interest has been adversely affected by an abuse of managerial discretion. The Commission properly found both prongs of this test had been met in this case.

20. Denied in part. The decisions relied upon by the Commission uphold the test articulated in *Metropolitan Edison Company* regarding when the Commission may intervene in a utility’s management decisions. The remaining averments in Paragraph 20 are an admission of PWSA’s belief that the Commission may consider whether costs incurred are prudent in the context of a base rate case, to which no response is required.

21. Denied. The Commission properly applied the test articulated in the *Metropolitan Edison Company* case and determined that it may intervene in PWSA’s managerial decisions as the evidence supports the findings that (1) that continuation of the residency requirement would be an abuse of managerial discretion because PWSA has estimated that its work force is comprised of over 10% of full-time contractors, who work at a 150% to 200% cost premium which adds over two million dollars per year to its non-unionized work force cost and the residency requirement has prevented the PWSA from recruiting from the vast majority of the surrounding

²³ *Opinion*, at p.81.

²⁴ 62 Pa. Cmwlth. at 467 , 437 A.2d at 80.

Pittsburgh metropolitan area and has reduced its ability to maintain reasonable levels of redundancy among its staff and (2) continuation of the residency requirement would impeded PWSA's ability to comply with 66 Pa. C.S. § 1501.²⁵

22. Admitted.

23. Denied. The Commission is properly empowered to direct PWSA to remove the residency requirement from its Compliance Plan because the Commission has found the continuation of the residency requirement is an abuse of managerial discretion and will adversely affect the public interest.

24. Denied. The Commission applied the correct legal standard articulated in *Metropolitan Edison Company*. The Commission properly determined that PWSA's own admissions that the residency requirement interferes with PWSA's ability to comply with 66 Pa. C.S. § 1501.²⁶

25. Denied. The Commission properly found based on the evidence that the residency requirement results in a lack of adequate employees in PWSA's workforce and a lack of reasonable levels of redundancy in PWSA's workforce, therefore impeding compliance with 66 Pa. C.S. § 1501.

26. Denied. The Commission conducted a thorough and appropriate analysis in reaching its decision to direct PWSA to remove the residency requirement from its Compliance Plan. The Commission's findings on this issue are supported by substantial evidence in the record.

27. Denied. The Commission considered the evidence presented by PWSA in reaching its decision.²⁷

28. Denied. The Commission's correct decision is substantiated by the legal authorities it

²⁵ *Opinion*, at p. 81-82.

²⁶ *Opinion*, at p. 81.

²⁷ *Opinion*, at p. 75-76.

cites, and the Commission's findings are supported by substantial record evidence.

29. The averments in Paragraph 29 constitute a prayer for relief to which no response is necessary.

V. REQUEST FOR RECONSIDERATION ON UNMETERED ISSUES

30. Denied in part. PWSA's request for reconsideration and/or clarification is a prayer for relief to which no reply is necessary. The remaining averments in Paragraph 30 are denied. Reconsideration is not appropriate as the Commission did not overlook that a Section 507 proceeding and a base rate proceeding for PWSA were pending in reaching its decision. PWSA suggested in its Exceptions that metering issues be deferred to the Section 507 proceeding.²⁸ It is apparent that the Commission intentionally declined to defer resolution of the unmetered issues to the Section 507 proceeding. Likewise, the Commission signaled awareness of PWSA's ability to file future base rate proceedings,²⁹ but correctly chose to deal with unmetered issues at this stage.³⁰ It is denied that PWSA did not have the opportunity to fully litigate these issues: PWSA submitted testimony on these issues,³¹ briefed these issues,³² and filed exceptions regarding these issues.³³ Furthermore, as part of the *Joint Petition for Settlement* ("2018 Settlement") reached in PWSA's 2018 base rate proceeding, PWSA agreed that in the Compliance Plan proceeding, it will consider proposing a flat rate for water and wastewater service for all unmetered and

²⁸ *Opinion*, at p. 37,55 citing to *Exceptions of Pittsburgh Water and Sewer Authority* ("PWSA Exceptions"), at 6,11,14

²⁹ *Opinion*, at p. 61, 62.

³⁰ *Opinion*, at p. 40 ("Compliance with Section 65.7 of our Regulations – coupled with the revised billing plan for unmetered and unbilled City properties discussed in the next section – are necessary elements of moving toward end-state compliance with the Code and our Regulations as contemplated under Act 65 and our *FIO*").

³¹ *PWSA Statement No. C-1*, at p. 16-31; *PWSA Statement No. C-1R*, at p. 15-30; *PWSA Statement No. C-1SD*, at p. 11-14.

³² *Main Brief of the Pittsburgh Water and Sewer Authority*, at p. 11-12, 22-29; *Reply Brief of the Pittsburgh Water and Sewer Authority*, at p. 5-15.

³³ *PWSA Exceptions*, at p. 2-15.

unbilled municipal and government properties or buildings served by the PWSA, for inclusion in its next base rate case.³⁴ PWSA's suggestion that it was deprived the opportunity to fully and fairly litigate these issues is disingenuous.

31. Admitted in part. By way of further answer, the Commission did provide some guidance on rates:

We agree with the ALJs that issuing anything less than bills based on full metered rates once meters are installed: (1) prevents the PWSA from collecting tariffed revenue; (2) results in charging discriminatory rates; (3) "condone[s] and perpetuate[s] the imbalanced, discriminatory relationship the City has had with the PWSA for longer than necessary;" and (4) requires "non-City ratepayers to foot their full bill for future rate increases while the City is still receiving free water service." See R.D. at 127.

....

We are of the opinion that simply because City-owned buildings and properties are not metered does not permit the allowance of free service. Commission Regulations permit flat rate service pending implementation of a reasonable metering program or under special circumstances as may be permitted by the Commission for good cause. 52 Pa. Code § 65.7. Therefore, implementation of a flat rate in the PWSA's tariff for unmetered City-owned buildings and properties will ensure that the City pays the PWSA for its service and alleviate the burden now placed upon the PWSA customers.³⁵

The Commission also stated, "Private 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."³⁶

32. Denied. The Commission did not overlook the Section 507 and rate base proceedings in

³⁴ 2018 Settlement, at ¶ III.H.6.

³⁵ Opinion, at p. 59, 61.

³⁶ Opinion, at p. 60.

reaching its decision, as both of these options were discussed and implicitly rejected by the Commission, which correctly determined that it is appropriate to resolve unmetered issues in the Compliance Plan proceedings.³⁷

33. The averments in Paragraph 33 are a prayer for relief to which no response is necessary. To the extent a response is necessary, the *Final Order* speaks for itself and, upon the *Final Order* becoming full and final, the issues determined therein are ultimately the Commission's precedent. With regard to the Section 507 and base rate proceedings, any issues already resolved in the Compliance Plan proceedings bind the parties through *stare decisis*, and cannot be relitigated in subsequent proceedings concerning PWSA. The OSBA is without information or knowledge sufficient to form a belief as to the truth of whether PWSA agrees with the main themes of the *Final Order*.

34. Denied. The unmetered issues decided by the Commission in the *Final Order* are properly resolved in the Compliance Plan proceeding. As noted by the Commission, "PWSA cannot circumvent the Code and Commission mandates by making separate arrangements through a Cooperation Agreement with the City."³⁸

35. Denied. The Commission properly reached its decision rejecting any step-billing plan for City-owned properties after a full evidentiary record was produced on this issue during the Compliance Plan proceedings. The Commission also suggested that PWSA create a separate class of customers for the City in order to allow for appropriate ratemaking treatment to be allowed in PWSA's next base rate case.³⁹ PWSA should not be allowed to re-litigate these issues in the Section 507 Proceeding after a full evidentiary record has been developed in the

³⁷ *Opinion*, at p. 37,40, 55, 61, 62.

³⁸ *Opinion*, at p. 59.

³⁹ *Opinion*, at p. 61.

Compliance Plan proceeding, and the Commission found substantial evidence in the record to support its decisions.

36. Denied. The Commission properly reached its decision on meter installation costs for the City after a full evidentiary record was produced on this issue during the Compliance Plan proceedings. Based on the evidentiary record, the Commission determined:

Although we recognize that the Commission has the discretion to depart from the regulatory provision directing a public utility to provide and install meters at its own expense, we do not find such a waiver to be appropriate in this proceeding. Moreover, failing to adhere to the meter provision set forth in 52 Pa. Code § 65.7(b) and adopting the PWSA's proposal to split the costs of City meter installations would appear to constitute unreasonable discrimination in ratemaking, which is prohibited under Section 1304 of the Code, 66 Pa. C.S. § 1304.⁴⁰ (emphasis added).

To allow PWSA to relitigate this issue in the Section 507 Proceeding would be error.

37. Denied. The unmetered issues decided by the Commission in the *Final Order* are properly resolved in the Compliance Plan proceeding. "PWSA cannot circumvent the Code and Commission mandates by making separate arrangements through a Cooperation Agreement with the City."⁴¹

38. Denied. As appropriately determined by the Commission:

The PWSA is an independent entity from the City, now under the jurisdiction of the Commission. A new Cooperation Agreement will not change this fact. Although the PWSA and the City may not have had the traditional independent utility-customer relationship before coming under Commission jurisdiction...they must now.⁴² (internal footnotes omitted)

The unmetered issues decided by the Commission in the *Opinion* and *Final Order* are issues correctly resolved in the Compliance Plan proceeding. These issues should not and need not be examined in the context of the City Cooperation Agreement. The

⁴⁰ *Opinion*, at p. 39.

⁴¹ *Opinion*, at p. 59.

⁴² *Opinion*, at p. 59.

decisions by the Commission in the *Opinion* and *Final Order* on the unmetered issues bring PWSA into greater compliance with the Public Utility Code and Regulations.

39. Denied. The unmetered issues decided by the Commission in the *Order* are properly resolved in the Compliance Plan proceeding. The decisions by the Commission in the *Opinion* and *Final Order* on the unmetered issues bring PWSA into greater compliance with the Public Utility Code and Regulations. To allow PWSA to relitigate these issues in the Section 507 Proceeding would be an error. The remainder of the terms of the City Cooperation Agreement, not preempted by decisions in the Compliance Plan proceeding *Opinion* and *Final Order*, may be examined in the Section 507 Proceeding.

40. The averments in Paragraph 40 are a prayer for relief to which no response is necessary. To the extent a response is necessary, the *Final Order* speaks for itself and, upon the *Final Order* becoming full and final, the issues determined therein are ultimately the Commission's precedent. With regard to the Section 507 proceedings, any issues already resolved in the Compliance Plan proceedings bind the parties through *stare decisis*, and cannot be relitigated in subsequent proceedings concerning PWSA.

41. Denied. The unmetered issues decided by the Commission in the *Final Order* are properly resolved in the Compliance Plan proceeding. The decisions by the Commission in the *Opinion* and *Final Order* on the unmetered issues bring PWSA into greater compliance with the Public Utility Code and Regulations. The Commission signaled awareness of PWSA's ability to file future base rate proceedings,⁴³ but correctly chose to deal with unmetered issues in the Compliance Plan proceeding.⁴⁴

⁴³ *Opinion*, at p. 61, 62.

⁴⁴ *Opinion*, at p. 40 ("Compliance with Section 65.7 of our Regulations – coupled with the revised billing plan for unmetered and unbilled City properties discussed in the next section – are necessary elements of moving toward end-state compliance with the Code and our Regulations as contemplated under Act 65 and our *FIO*").

42. Admitted in part, denied in part. It is admitted that PWSA has undertaken to identify the costs associated with City-owned properties as part of its current rate case proceeding. It is denied that PWSA's rate case proceeding is the appropriate proceeding in which to consider City-owned property billing issues. To the contrary, it would be highly inappropriate and prejudicial to allow PWSA to relitigate the City-owned property billing issues that were presented and ruled upon in the Compliance Plan proceeding. The decisions by the Commission in the *Opinion* and *Final Order* on the City-owned property billing issues bring PWSA into greater compliance with the Public Utility Code and Regulations.

43. Admitted in part, denied in part. It is admitted that both the Section 507 and rate base proceedings are integral to the process of reordering the relationship between PWSA and the City. It is denied that preventing the parties from developing a full record on all issues in the Section 507 and rate base proceedings is inappropriate. To the contrary, it would be highly inappropriate and prejudicial to allow PWSA to relitigate the unmetered issues that were presented and ruled upon in the Compliance Plan proceeding. A full evidentiary record was developed in the Compliance Plan proceeding, PWSA agreed in the *2018 Settlement* to litigate these issues in the Compliance Plan proceeding, and the Commission appropriately determined that the unmetered issues should be resolved in the Compliance Plan proceeding to bring PWSA into greater compliance with the Public Utility Code and Regulations.

44. Denied. The unmetered issues decided by the Commission in the *Final Order* are properly resolved in the Compliance Plan proceeding. The decisions by the Commission in the *Opinion* and *Final Order* on the unmetered issues bring PWSA into greater compliance with the Public Utility Code and Regulations. It would be highly inappropriate and prejudicial to allow

PWSA to relitigate in the Section 507 and base rate proceedings the unmetered issues that were presented and ruled upon in the Compliance Plan proceeding.

**VI. REQUEST FOR CLARIFICATION AND AMENDMENT OF COMMISSION
REVISIONS OF THE PARTIAL SETTLEMENT REGARDING LEAD
SERVICE LINE REMEDIATION ISSUES**

45-60. These paragraphs pertain to reconsideration/clarification of the Lead Remediation Program. As the Commission determined that non-residential customers are precluded from participation in the Program, the OSBA takes no position on the arguments raised by PWSA regarding its request for reconsideration/clarification of the Lead Remediation Program.

VII. CONCLUSION

In view of the foregoing, the Office of Small Business Advocate respectfully requests that the Pennsylvania Public Utility Commission deny the relief requested in PWSA's *Petition for Reconsideration*.

Respectfully submitted,

/s/ Erin K. Fure

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

For:

John R. Evans
Small Business Advocate

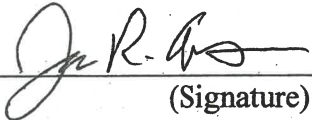
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Dated: April 20, 2020

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: 4/20/20


(Signature)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the	:	Docket No. M-2018-2640802
Public Utility Code Regarding Pittsburgh	:	Docket No. M-2018-2640803
Water and Sewer Authority – Stage 1	:	
	:	
Petition of The Pittsburgh Water and	:	Docket No. P-2018-3005037
Sewer Authority for Approval of Its Long-	:	Docket No. P-2018-3005039
Term Infrastructure Improvement Plan	:	

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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The Honorable Conrad A. Johnson
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(First Class Mail ONLY)

DATE: April 20, 2020

/s/ Erin K. Fure

Erin K. Fure
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Attorney ID No. 312245