

WILLIAM PEDUTO
MAYOR



YVONNE HILTON
CITY SOLICITOR

CITY OF PITTSBURGH
DEPARTMENT OF LAW
CITY-COUNTY BUILDING

April 21, 2020

VIA E-FILE

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: PA Public Utility Commission v. Pittsburgh Water and Sewer Authority
Docket Nos. R-2020-3017951, R-2020-3017970, and U-2020-3015258

Dear Secretary Chiavetta,

Enclosed for filing, please find the **Petition to Intervene of the City of Pittsburgh** in the above noted proceedings. Copies have been served in accordance with the attached Certificate of Service.

Respectfully submitted,

/s/ Yvonne S. Hilton
City Solicitor

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 :

COOPERATION AGREEMENT BETWEEN THE CITY OF PITTSBURGH AND PITTSBURGH WATER AND SEWER AUTHORITY : **Docket No. U-2020-3015258**
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**PETITION TO INTERVENE OF
THE CITY OF PITTSBURGH**

City of Pittsburgh

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April 21, 2020

Pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (the “PUC” or “Commission”), 52 Pa. Code §§ 5.71-.75, the City of Pittsburgh (the “City”) through its undersigned legal counsel, hereby petitions the Commission to intervene in the above-captioned proceedings. In support thereof, the City states as follows:

1. On September 28, 2018, the Pittsburgh Water and Sewer Authority (the “PWSA”) filed a Petition with the Commission for approval of its Compliance Plan at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (sewage) and its Long-Term Infrastructure Improvement Plan at Docket Nos. P-2018-3005037 (water) and P-2018-3005039 (sewage). The Commission consolidated these proceedings.

2. In addition, a cooperation agreement dated October 3, 2019, between the City and the PWSA is filed at Docket No. U-2020-3015258 (filed December 20, 2019), and a PWSA Rate filing is filed at Docket NO. R-2020-3017951 (water) and R-2020-3017070 (wastewater) (filed March 6, 2020). These matters are currently both pending to resolve, *inter alia*, payments by and between the City and the PWSA.

3. The City understands that the Rate Case and the Cooperation Agreement Case are, or will be, assigned to the same Administrative Law Judge, and the PWSA plans to file a request to consolidate the two proceedings into the same docket.

4. The City understands the PUC will employ the Cooperation Agreement proceeding and the Rate Case Proceeding, 66 Pa. C.S. §§ 507 and 1308, as on-the-record proceedings to achieve an equitable, reasonable and fair final resolution of matters related to City payments for water services.

5. Eligibility to intervene in Commission proceedings is governed by 52 Pa. Code § 5.72, which provides in relevant part that “[a] petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.” 52 Pa. Code § 5.72(a).

6. Section 5.72 further provides that the right or interest may be one “which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.” 52 Pa. Code. § 5.72(a)(2).

7. Even though Section 5.72 speaks of the rights of a “person” to intervene, this includes entities in addition to natural born persons. See Lyft, Inc. v. Pa. Public Utility Commission, 145 A.3d 1235, 1246 (Pa. Commw. Ct. 2016) (discussing the Pittsburgh Post-Gazette's ability to intervene in a matter before the Commission).

8. Further, the Commonwealth Court recently announced that intervention in a Commission proceeding is appropriate where intervention “may be in the public interest” and that “the standard for intervention in a proceeding before the [Commission] is easily satisfied.” Allegheny Reproductive Health Ctr. v. Pa. Dept. of Health and Human Servs., ___ A.3d ___, 2020 WL 424866 at *6 (Pa. Commw. Ct. 2020) (emphasis added) (internal quotations omitted).

9. The City, a Home Rule Municipality organized and existing under the Home Rule Charter and Optional Plans Law, 53 Pa.C.S. § 2901, *et seq.*, and city of the second class by statutory designation, is a political subdivision of the Commonwealth of Pennsylvania and maintains its principal place of business at 414 Grant Street, 5th Floor City-County Building, Pittsburgh, PA 15219.

10. The PWSA is a body corporate and politic organized and existing under the Pennsylvania Municipality Authorities Act, 53 Pa. C.S. § 5601 et seq. (the “Act”). It was created pursuant to Resolution No. 36 of the Council of the City of Pittsburgh (“City Council”) on February 6, 1984, approved by Mayor Richard Caliguiri on February 8, 1984, and effective on February 16, 1984. The Secretary of the Commonwealth of Pennsylvania approved the PWSA’s Articles of Incorporation on February 17, 1984.

11. The City established the PWSA in 1984 to assume responsibility for operating the City’s water supply and distribution and wastewater collection systems (the “Water and Sewer System”).

12. The PWSA operates and maintains the City’s Water and Sewer System, which provides these services to a majority of the residential, business, educational facilities, and other types of structures within the City’s corporate limits. Within the City, there are 80,569 water and sewer accounts and 30,728 sewer-only accounts. Millvale, a municipal customer of PWSA services, has 1,678 water-only accounts.

13. Pursuant to a lease and management agreement dated March 29, 1984 (the “1984 Agreement”) between the PWSA and the City, the City leased its Water and Sewer System to the PWSA, with the City continuing to provide services necessary to operate the system, acting as an agent of the PWSA.

14. In 1995, the parties terminated the 1984 Lease Agreement and entered into a 1995 Capital Lease Agreement dated July 15, 1995, which remains in effect today. The PWSA and the City also entered into a cooperation agreement with an effective date of January 1, 1995 (the “1995 Cooperation Agreement”) and later amended (the “First Amendment”) on March 21, 2011.

15. The 1995 Cooperation Agreement, as amended, remained in effect until October 3, 2019, when the PWSA terminated it because the parties negotiated a new cooperation agreement, the 2019 Cooperation Agreement. The 2019 Cooperation Agreement is effective October 3, 2019.

16. The terms of the 2019 Cooperation Agreement are significant because it recognizes transitions in the relationship between two discrete governmental entities, allowing each party the opportunity to implement these significant changes in a reasonable period of time to benefit the taxpayers and ratepayers, respectively, many of whom are the same residents of the City.

- a. It confirms the City's commitment to change a thirty-six (36) year relationship over the course of five (5) years, which coincides with the time remaining on the 1995 Capital Lease Agreement, which expires on September 1, 2025. Following the expiration of the 1995 Capital Lease Agreement, the PWSA may then exercise the option to purchase the Water and Sewer System from the City for one dollar (\$1.00).
- b. It recognizes the PWSA, an independent municipal authority, is transitioning from a municipal authority that is not subject to the PUC's authority and oversight to a municipal authority that is subject to the PUC's authority and oversight. It is assuming an identity that is more akin to a traditional public utility rather than an independent authority.
- c. It identifies the City, the current owner of the water and sewer system, is transitioning from a Water and Sewer System owner—allowing it an agreed upon access to *its* own water and sewer system—to a customer, paying for its access to water and sewer services.

17. Next, the City negotiated the 2019 Cooperation Agreement, in part, to balance the significant change, understanding each party must take specific positions: one to protect its customers and the other to protect its residents.

18. Therefore, the City is eligible to intervene as of right and because its interest in these proceedings are of such a nature that its intervention is necessary and appropriate to the administration of the statute under which the proceeding is brought.” 52 Pa. Code § 5.72(a).

19. Further, the City has identified an interest that will be directly affected by these proceedings, and there is no other party but the City that can adequately represent its interests because the Commission intends to bind the City with any decision that it enters in these proceedings. 52 Pa. Code. § 5.72(a)(2).

20. Finally, the City's intervention is clearly in the public's interest. See, e.g., Allegheny Reproductive Health Ctr. v. Pa. Dept. of Health and Human Servs., ___ A.3d ___, 2020 WL 424866 at *6 (Pa. Commw. Ct. 2020) (emphasis added) (internal quotations omitted).

21. Pursuant to the City's current position and until such point in time where the PWSA assumes full ownership of the Water and Sewer System, they each receive a certain grant of general immunity to claims and lawsuits. See the Political Subdivision Tort Claims Act, 42 Pa. C.S. § 8541 *et seq.*

22. However, this general grant of immunity is subject to limited exceptions that include claims and suits arising from alleged dangerous conditions of the facilities of sewer and water owned by the local agency and located within rights-of-way. See 42 Pa. C.S. § 8542(b)(5).¹

23. The City believes its exposure to liability and damages is germane to the overall discussions because statutory and decisional law states that neither the City nor the PWSA can expand or restrict the legislative grant of immunity or the exceptions to the general grant of immunity in a manner that is inconsistent with the Tort Claims Act.

¹ 42 Pa. C.S. 8542(b)(5) **Utility service facilities.**--A dangerous condition of the facilities of steam, sewer, water, gas or electric systems owned by the local agency and located within rights-of-way, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

24. As municipal entities, the law limits the ability of the City and the PWSA to shift exposure (liability and damages) in the same manner as a private entity, and neither statutory law nor decisional law empower the PUC to alter or amend the Tort Claims Act.

25. Therefore, the City's continuing ownership exposes it to ongoing claims even though the PWSA now operates and maintains the Water and Sewer System pursuant to the edicts announced by the PUC.

26. Finally, the City is entitled as a matter of law to intervene because it will suffer immediate and irreparable harm if the PUC denies this petition to intervene.

27. By and through the presentation of this petition, the City reserves its right to seek legal or equitable relief in an appropriate forum of its choosing because it believes the PUC may not have full and complete jurisdiction over all of the issues.

28. The City has a business address at the City-County Building, 414 Grant Street, Pittsburgh, PA 15219.

29. The City is represented in this proceeding by the City of Pittsburgh Department of Law:

Yvonne S. Hilton, Esquire;
John F. Doherty, Esquire;
Lawrence H. Baumiller, Esquire; and
John V. DeMarco, Esquire.

30. The City consents to the service of documents by electronic mail, as provided in 52 Pa. Code § 1.54(b)(3).

WHEREFORE, the City respectfully requests that the Commission enter an order granting the City full status as an intervener in these proceedings with active party status.

Respectfully submitted,

/s/ Yvonne S. Hilton, Esquire

City Solicitor

City of Pittsburgh
City of Pittsburgh Department of Law
City-County Building, Suite 313
414 Grant Street
Pittsburgh, PA 15219

Date: April 21, 2020

Verification

I, Kevin Pawlos, on behalf of the City of Pittsburgh, hereby state that the facts contained in the foregoing *Petition to Intervene of the City of Pittsburgh* are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, 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 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: April 21, 2020

/s/ Kevin Pawlos

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

COOPERATION AGREEMENT BETWEEN THE CITY OF PITTSBURGH AND PITTSBURGH WATER AND SEWER AUTHORITY : **Docket No. U-2020-3015258**

Certificate of Service

I hereby certify that I have this day served copies of the **Petition to Intervene of the City of Pittsburgh** upon the parties and interested stakeholders in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

VIA EMAIL

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Respectfully submitted,

/s/Yvonne S. Hilton, Esquire
City Solicitor