



COMMONWEALTH OF PENNSYLVANIA

April 29, 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 to Intervene of the City of Pittsburgh, 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 TO INTERVENE  
OF THE CITY OF PITTSBURGH**

Pursuant to 52 Pa. Code §5.61, the Office of Small Business Advocate (“OSBA”) hereby answers the *Petition to Intervene of the City of Pittsburgh* (“*Petition to Intervene*”) filed with the Pennsylvania Public Utility Commission (“Commission”) on April 9, 2020, and avers the following in support thereof:

1. Admitted.
2. Admitted. By way of further answer, 52 Pa. Code § 5.72 speaks for itself. Intervention in Commission proceedings is also constrained by the following time requirements outlined in 52 Pa. Code § 5.74:

(b) Petitions to intervene shall be filed:

(1) No later than the date fixed for the filing of responsive pleadings in an order or notice with respect to the proceedings but not less than the notice and protest period established under §§ 5.14 and 5.53 (relating to applications requiring notice; and time of filing) absent good cause shown.

(2) No later than the date fixed for filing protests as published in the *Pennsylvania Bulletin* except for good cause shown.

(3) In accordance with § 5.53 if no deadline is set in an order or notice with respect to the proceedings.

(4) A statutory advocate may exercise a right of participation or file a notice of intervention consistent with law at any time in a proceeding. A statutory advocate exercising a right of participation or filing a notice of intervention following expiration of any protest or intervention period shall take the record as developed unless determined otherwise in exceptional circumstances for good cause shown.

In this case, the Notice of the Procedure for Commission Review of the September 28, 2018 Compliance Plan and Long Term Infrastructure Improvement Plan (“LTIIP”) Filings of the Pennsylvania Water and Sewer Authority (“PWSA”) was published in the Pennsylvania Bulletin on October 13, 2018.<sup>1</sup> No deadline was specified in the October 13, 2018 Notice for the filing of protests, therefore, pursuant to 52 Pa. Code § 5.53, all protests were required to be filed within sixty (60) days of the October 13, 2018 Notice. The City of Pittsburgh (“City”) did not file a petition to intervene, protest, or any pleading within that sixty-day time frame. The City is not a statutory advocate and does not have the automatic right to file a notice of intervention at any time during the proceeding. The City filed its *Petition to Intervene* in the above-captioned matter only after the Commission issued its March 26, 2020 *Opinion* and *Final Order*.

3. Admitted. By way of further answer, 52 Pa. Code § 5.72 speaks for itself. Intervention in Commission proceedings is also constrained by the time requirements outlined in 52 Pa. Code § 5.74.

4. Admitted. By way of further answer, 52 Pa. Code § 1.8 defines “Persons” as including “individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities, municipal corporations or other political subdivisions.”

5. Admitted in part, denied in part. By way of further answer, the decision in Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services, 2020 Pa. Comma. LEXIS 104, speaks for itself. To the extent the averments are consistent with the cited decision, they are admitted. To the extent the averments are not consistent with the cited decision, they are denied.

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<sup>1</sup> 48 Pa. B. 6635.

6. Admitted.

7. Denied. The OSBA is without knowledge or information sufficient to form a believe as to the truth of the averments in Paragraph 7.

8. Admitted in part, denied in part. It is admitted that PWSA was established by the City in 1984. It is denied that PWSA was originally established to assume responsibility for operating the City's water supply and distribution and wastewater collection systems ("Water and Sewer System"). According to PWSA's Compliance Plan, updated as of April 27, 2020 and filed at the above-captioned dockets, PWSA originally functioned as a financing authority.<sup>2</sup>

9. Denied. The OSBA is without knowledge or information sufficient to form a believe as to the truth of the averments in Paragraph 9.

10. Denied. The OSBA is without knowledge or information sufficient to form a believe as to the truth of the averments in Paragraph 10.

11. Admitted in part, denied in part. It is admitted that PWSA operates and maintains the City's Water and Sewer System. The remaining averments in Paragraph 11 are denied, as the OSBA is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 11.

12. Admitted in part, denied in part. It is admitted that the City leased its Water and Sewer System to PWSA. The remaining averments in Paragraph 12 are denied, as the OSBA is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 12.

13. Admitted. By way of further answer, the 1995 Cooperation Agreement speaks for itself.

14. Admitted.

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<sup>2</sup> Compliance Plan for the Pittsburgh Water and Sewer Authority, revised as of April 27, 2020, at p. 16.

15. Admitted in part, denied in part. It is admitted that the City and PWSA negotiated the 2019 Cooperation Agreement to be effective on October 3, 2019. It is denied that the 2019 Cooperation Agreement became effective on October 3, 2019 because the contract has not been approved by the Commission as of the date of this filing. By way of further answer, PWSA is under the jurisdiction of the Commission and, as noted in the *Final Order*, “PWSA cannot circumvent the Code and Commission mandates by making separate arrangements through a Cooperation Agreement with the City.”<sup>3</sup>

16. Denied. The Commission has not approved the 2019 Cooperation Agreement pursuant to 66 Pa. C.S. § 508.

17. Denied. The OSBA is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 17 regarding the City’s beliefs. The remaining averments in Paragraph 17 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 17 are denied. By way of further answer, the 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.”<sup>4</sup> Any issues not already decided by the Commission that have bearing on the 2019 Cooperation Agreement will be addressed in the pending proceeding at Docket No. U-2020-3017970.

18. Denied. The City received notice of the above-captioned proceedings. Notice of the Procedure for Commission Review of the September 28, 2018 Compliance Plan and LTIIP Filings of PWSA was published in the Pennsylvania Bulletin on October 13, 2018.<sup>5</sup> The October

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<sup>3</sup> March 26, 2020 Opinion (“*Opinion*”), at p. 59.

<sup>4</sup> *Opinion*, at p. 59.

<sup>5</sup> 48 Pa. B. 6635.

13, 2018 Notice indicated that, “Regarding the PWSA Compliance Plan, no later than 45 days after this *Pennsylvania Bulletin* publication, the Commission will, by means of secretarial letter, assign the filings to the Office of Administrative Law Judge (OALJ) for the resolution of any factual matters that PWSA or interested parties may seek to develop.” Furthermore, at Docket No. R-2018-3002645 *et al.*, there are several filings evidencing that the City was provided with notice that the Cooperation Agreement was going to be addressed in the Compliance Plan. On December 13, 2018, a letter from PWSA to the City was filed in which PWSA formally notified the City that the Cooperation Agreement would be reviewed in the Compliance Plan proceeding and included copies of the Compliance Plan filing. On January 28, 2019, a letter from PWSA to the City was filed in which PWSA served on the City the *Recommended Decision* in PWSA’s 2018 Base Rate Case. The *Recommended Decision* adopts the agreement of the parties to investigate the Cooperation Agreement in the Compliance Plan proceeding.<sup>6</sup> On February 28, 2019, a letter from PWSA to the City was filed in which PWSA served on the City the Commission’s *Opinion and Order* adopting the *Recommended Decision* in PWSA’s 2018 Base Rate Case.<sup>7</sup>

19. Denied. As outlined in the OSBA’s above answer to Paragraph 18, the City did receive adequate notice and was provided with a meaningful opportunity to be involved in the Compliance Plan proceedings. Despite being notified that the Cooperation Agreement could be addressed in the Compliance Plan proceedings as early as October 13, 2018, the City chose not to seek intervention in the Compliance Plan proceedings until the Commission issued its Final Order on March 26, 2020.

20. The averments in Paragraph 20 set forth a legal argument to which no response is

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<sup>6</sup> *Recommended Decision* at Docket No. R-2018-3002645 *et al.*, issued January 17, 2019, at p. 16, 141.

<sup>7</sup> *Opinion and Order* at Docket No. R-2018-3002645 *et al.*, entered February 27, 2019, at p.11-12.



required. To the extent a response is required, the averments in Paragraph 20 are denied, and strict proof thereof is demanded.

21. The averments in Paragraph 21 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 21 are denied, and strict proof thereof is demanded.

22. The averments in Paragraph 22 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 22 are denied, and strict proof thereof is demanded.

23. The averments in Paragraph 23 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 23 are denied, and strict proof thereof is demanded.

24. Denied. The OSBA is without knowledge or information sufficient to form a belief as to the truth of the averments Paragraph 24 regarding PWSA and the City's motivations. The remaining averments in Paragraph 24 constitute set forth a legal argument to which no response is required. To the extent a response is required, the remaining averments in Paragraph 24 are denied, and strict proof thereof is demanded

25. Denied. The OSBA is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 25 regarding the City's beliefs. The remaining averments in Paragraph 25 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 25 are denied. By way of further answer, the 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.”<sup>8</sup> Any issues not already decided by the Commission that have bearing on the 2019 Cooperation Agreement will be addressed in the pending proceeding at Docket No. U-2020-3017970.

26. The averments in Paragraph 26 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 26 are denied. By way of further answer, the City was placed on notice multiple times that the Cooperation Agreement could and would be addressed in the Compliance Plan proceedings. The City had ample opportunity to seek intervention in the Compliance Plan proceedings, as it had sixty days from October 13, 2018 to do so. The City chose not to seek intervention in the Compliance Plan proceedings until after the Commission issued its *Final Order*. The City was not deprived of having meaningful notice and a meaningful opportunity to participate in the Compliance Plan proceedings; rather the City chose not to seek intervention until April 9, 2020, despite being on notice of the proceeding as of at least October 13, 2018.

27. Denied. The OSBA is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 27 regarding the City’s beliefs. The remaining averments in Paragraph 27 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 27 are denied. By way of further answer, the 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.”<sup>9</sup> Any issues not already decided by the Commission that have bearing on the 2019 Cooperation Agreement will be addressed in the pending proceeding at Docket No. U-2020-3017970.

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<sup>8</sup> *Opinion*, at p. 59.

<sup>9</sup> *Opinion*, at p. 59.



28. The averments in Paragraph 28 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 28 are denied. By way of further answer, the issues decided by the Commission in the *Final Order* are properly resolved in the Compliance Plan proceeding. Any issues not already decided by the Commission that have bearing on the 2019 Cooperation Agreement will be addressed in the pending proceeding at Docket No. U-2020-3017970. The City has the opportunity to participate in the proceedings at Docket No. U-2020-3017970. PWSA's position was thoroughly considered by the Administrative Law Judges ("ALJs") and the Commission in the Compliance Plan proceedings. The City has not been prejudiced in the Compliance Plan proceedings as it had ample notice and opportunity to seek intervention in the proceedings but chose not to until after the Commission's *Final Order* was issued.

29. Denied. The City has not been prejudiced in the Compliance Plan proceedings as it had ample notice and opportunity to seek intervention in the proceedings but chose not to until after the Commission's *Final Order* was issued. The City should not be rewarded for sitting on its hands. To the contrary, granting the City's *Petition to Intervene* at this late stage would prejudice all other parties who fully participated in the litigation stages of the Compliance Plan proceedings as it may force the parties to relitigate their respective cases.

30. The averments in Paragraph 30 set forth a legal conclusion to which no response is required. By way of further answer, 42 Pa. C.S. § 8541 *et seq.* speak for themselves.

31. The averments in Paragraph 31 set forth a legal conclusion to which no response is required. By way of further answer, 42 Pa. C.S. § 8542(b)(5) speaks for itself.

32. The averments in Paragraph 32 set forth a legal argument to which no response is

required. To the extent a response is required, the averments in Paragraph 32 are denied. By way of further response, the City had ample notice and opportunity to seek intervention in the proceedings but chose not to until after the Commission's *Final Order* was issued. The City could have made the legal arguments that it sets forth in Paragraph 32 in the Compliance Plan proceeding, but chose not to participate or seek intervention in the proceedings until this point. The issues decided by the Commission in the March 26, 2020 *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 decisions by the Commission in the *Opinion* and *Final Order* bring PWSA into greater compliance with the Public Utility Code and Regulations. 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 proceeding at Docket No. U-2020-3017970. The City's averments in Paragraph 32 do not meet the standard for intervention under 52 Pa. Code § 5.74(c), which states "intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances."

33. The averments in Paragraph 33 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 33 are denied. By way of further response, the City had ample notice and opportunity to seek intervention in the proceedings and could have made the legal arguments that it sets forth in Paragraph 33 in the Compliance Plan proceeding, but chose not to participate or seek intervention in the proceedings until after the Commission's *Final Order* was issued. The City's averments in Paragraph 33 do not constitute extraordinary circumstances under 52 Pa. Code § 5.74(c), and therefore the City fails to meet its burden of showing intervention is warranted.

34. The averments in Paragraph 34 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 34 are denied. By way of further response, the City had ample notice and opportunity to seek intervention in the proceedings and could have made the legal arguments that it sets forth in Paragraph 34 in the Compliance Plan proceeding, but chose not to participate or seek intervention in the proceedings until after the Commission's *Final Order* was issued. The City's averments in Paragraph 34 do not constitute extraordinary circumstances under 52 Pa. Code § 5.74(c), and therefore the City fails to meet its burden of showing intervention is warranted.

35. Admitted in part, denied in part. By way of further answer, the *Opinion* and *Final Order* speak for themselves. The remaining averments in Paragraph 35 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 35 are denied. By way of further response, the City had ample notice and opportunity to seek intervention in the proceedings, but chose not to participate or seek intervention in the proceedings until after the Commission's *Final Order* was issued. The City's averments in Paragraph 35 do not constitute extraordinary circumstances under 52 Pa. Code § 5.74(c), and therefore the City fails to meet its burden of showing intervention is warranted.

36. The averments in Paragraph 36 set forth a legal argument to which no response is required. To the extent a response is required, the averments in Paragraph 36 are denied.

37. Denied. It is denied that the City is entitled as a matter of law to intervene in this proceeding. Pursuant to 52 Pa. Code §5.74(c), "Except with regard to statutory advocates under subsection (b)(4), intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances." The City has failed to meet its burden of demonstrating extraordinary circumstances warranting intervention under 52 Pa. Code § 5.74(c), which is the

only avenue available to the City, as an evidentiary hearing took place in this proceeding on August 21, 2019 (approximately six months before the City filed its *Petition to Intervene*).

38. Admitted.

39. Admitted.

40. Admitted.

WHEREFORE, the Office of Small Business Advocate respectfully requests that the Pennsylvania Public Utility Commission deny the relief requested in the City's *Petition to Intervene*.

Respectfully submitted,

/s/ Erin K. Fure

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Erin K. Fure  
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For:

John R. Evans  
Small Business Advocate

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Dated: April 29, 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: 04/29/20

John R. Evans  
(Signature)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

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

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

/s/ Erin K. Fure

DATE: April 29, 2020

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