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September 23, 2020

By Electronic Filing

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

Re: Pennsylvania Public Utility Commission v. Pittsburgh Water and Sewer Authority –
Water; Docket Nos. R-2020-3017951, et al.

Pennsylvania Public Utility Commission v. Pittsburgh Water and Sewer Authority –
Wastewater; Docket Nos. R-2020-3017970, et al.

Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of Act
11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to
Authorize the Pay-As-You-Go Method of Financing; Docket No. P-2020-3019019

**PRE-SERVED TESTIMONY AND HEARING EXHIBITS OF CITY OF
PITTSBURGH**

Dear Secretary Chiavetta:

In accordance with 52 Pa. Code § 5.412a, please accept the following pre-served written
testimony of City of Pittsburgh, along with associated exhibits, in the above-captioned matters:

1. Pittsburgh Statement No. 1, Direct Testimony and Exhibits of Dan Gilman;
2. Pittsburgh Statement No. 2, Direct Testimony of Howard Woods;
3. City of Pittsburgh's Hearing Exhibit No. 1; and,
4. Joint Hearing Exhibit No. 1 – Stipulation Recognizing Impact of Act 70 Upon
PWSA's Municipal Rate Proposal.



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August 27, 2020

VIA ELECTRONIC FILING

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

Re: Pennsylvania Public Utility Commission v. Pittsburgh Water and Sewer Authority
– Water; Docket Nos. R-2020-3017951, et al.

Pennsylvania Public Utility Commission v. Pittsburgh Water and Sewer Authority
– Wastewater; Docket Nos. R-2020-3017970, et al.

Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of
Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to
Authorize the Pay-As-You-Go Method of Financing; Docket No. P-2020-3019019

**STIPULATION RECOGNIZING IMPACT OF ACT 70 UPON PWSA'S
MUNICIPAL RATE PROPOSAL**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Stipulation Recognizing Impact of Act 70 Upon PWSA's Municipal Rate Proposal in the above-referenced matter. In addition to the parties who signed the Stipulation, both the Office of Small Business Advocate and Pittsburgh United have indicated their non-opposition to the Stipulation. Copies have been served in accordance with the attached Certificate of Service.

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
August 27, 2020
Page 2

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

/s/ Thomas J. Sniscak

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for The City of Pittsburgh

TJS/das
Enclosures

cc: Honorable Mary D. Long (malong@pa.gov)
Honorable Emily I. DeVoe (edevoe@pa.gov)
Yvonne S. Hilton, City Solicitor (yvonne.hilton@pittsburghpa.gov)
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Lawrence H. Baumiller, Assistant City Solicitor (lawrence.baumiller@pittsburghpa.gov)
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the persons listed below in accordance with the requirements of § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL ONLY

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/s/ Thomas J. Sniscak

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder

DATED: August 27, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017951 (water)
	:		C-2020-3019348
v.	:		C-2020-3019305
	:		
Pittsburgh Water and Sewer Authority - Water	:		
	:		
Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017970 (wastewater)
	:		C-2020-3019349
v.	:		C-2020-3019302
	:		
Pittsburgh Water and Sewer Authority - Wastewater	:		
	:		
Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to Authorize the Pay-As-You-Go Method of Financing	:	Docket Nos.	P-2020-3019019
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Stipulation Recognizing Impact of Act 70 Upon PWSA’s Municipal Rate Proposal

NOW COME the Stipulating Parties (“Stipulating Parties”) to the above-captioned proceedings seeking to conserve the time and resources of all parties to the proceeding, the Presiding Administrative Law Judges, and the Commission, and hereby stipulate as follows and request that the following be made part of the record:

1. During the pendency of these rate proceedings legislation was passed that governs the rates to be charged by the Pittsburgh Water & Sewer Authority (PWSA) to the City of Pittsburgh (City).
2. Specifically, on July 23, 2020, Governor Wolf signed Act 70, which, among other things, provides that the 2019 Cooperation Agreement between PWSA and the City has “the force

and effect of law” until January 1, 2025, unless PWSA and the City mutually agree to an earlier termination date. Section 2802-G. Also, Act 70 provides that the 2019 Cooperation Agreement shall “supersede, during the term of the cooperation agreement, any provision of 66 Pa.C.S. Pt. I, a commission regulation, policy statement, order and regulatory proceeding as they pertain to issues covered by the cooperation agreement, including the authority's rates, terms and conditions of service rendered to the city and the respective rights and duties between the authority and the city.” Section 2803-G. Act 70 is attached as Appendix A.

3. During the pendency of this proceeding and due to Commission Orders in a different proceeding issued before Act 70 became law, PWSA submitted supplemental testimony that revised the original position contained in its direct testimony submitted on March 6, 2020 by proposing to establish a Municipal rate in these rate proceedings for the first time on May 15, 2020.
4. On July 21, 2020, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate submitted their direct testimony in response to PWSA’s direct and supplemental testimony, and proposed adjustments or a different Municipal rate. At the time that these parties submitted their direct testimony, PWSA’s Municipal rate proposal was operative and not contravened by Act 70.
5. Based on the foregoing legislative provision as cited in paragraph 2 above, an unopposed petition for leave to withdraw PWSA’s proceeding for approval of the Cooperation Agreement under 66 Pa. C.S. § 507 was filed by PWSA. That petition is pending decision before the Administrative Law Judges.

6. Due to Act 70, PWSA has withdrawn or will withdraw its Supplemental testimony and associated exhibits or schedules establishing a Municipal rate for the City.
7. Due to Act 70 the Stipulated Parties agree that each is withdrawing any proposed Municipal Rate and withdraws any such recommendation or evidence in support of any recommended Municipal Rate in the above-captioned rate dockets. Withdrawal of such recommendation or evidence may be performed by any one of the four methods described in paragraph 8.
8. The Stipulating Parties shall indicate and identify, before entering any pre-submitted testimony and exhibits into the record, which portions of their pre-submitted testimony and exhibits are withdrawn. The Stipulated Parties may do so through (i) strike-through; (ii) a separate sheet identifying what pages, lines or sections or portions of exhibits are withdrawn; (iii) by clean copy; (iv) or by surrebuttal testimony. The Stipulating Parties may adjust any schedule that would change solely due to the withdrawal of a Municipal rate proposed or adjustment thereto. The Parties also agree that they will withdraw any adjustments in the rate case that assumes payments or remittances that are inconsistent with the Cooperation Agreement.
9. Stipulating Parties agree if a party withdraws its Municipal rate recommendation through surrebuttal testimony, the withdrawing party need not specifically identify each and every page, line or sections or portions of exhibits of its prior testimony related to the Municipal rate recommendation that should be considered withdrawn. However, the withdrawing party agrees it will make best efforts to refer to its prior testimony with sufficient specificity to leave no uncertainty its Municipal rate recommendation has been withdrawn.

10. If a party withdraws its recommendation regarding a Municipal rate through surrebuttal testimony, the Stipulating Parties agree they will not seek to prevent entry into the record of any testimony that the withdrawing party submitted prior to surrebuttal testimony related to the Municipal rate to the extent the recommendation contained in such prior testimony related to the Municipal rate has been withdrawn through surrebuttal testimony.
11. This Stipulation is without admission or prejudice in any other part of these rate proceedings and in any future rate proceeding.
12. The Stipulating Parties request that this stipulation be approved and made part of the record.
13. This Stipulation may be executed in counterparts, which shall together constitute one and the same stipulation agreement.

Stipulating parties:

For the City of Pittsburgh:	<u>Thomas J. Sniacak</u>	Date: 8/21/20
For the Pittsburgh Water & Sewer Authority:	_____	Date:
For the Bureau of Investigation & Enforcement:	_____	Date:
For the Office of Consumer Advocate:	_____	Date:
For the Office of Small Business Advocate:	_____	Date:

10. If a party withdraws its recommendation regarding a Municipal rate through surrebuttal testimony, the Stipulating Parties agree they will not seek to prevent entry into the record of any testimony that the withdrawing party submitted prior to surrebuttal testimony related to the Municipal rate to the extent the recommendation contained in such prior testimony related to the Municipal rate has been withdrawn through surrebuttal testimony.
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13. This Stipulation may be executed in counterparts, which shall together constitute one and the same stipulation agreement.

Stipulating parties:

For the City of Pittsburgh:

Date: 8/21/20

For the Pittsburgh Water & Sewer Authority:

Dann M. O'Neil

Date: 8/21/20

For the Bureau of Investigation & Enforcement:

Date:

For the Office of Consumer Advocate:

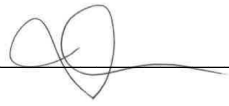
Date:

For the Office of Small Business Advocate:

Date:

10. If a party withdraws its recommendation regarding a Municipal rate through surrebuttal testimony, the Stipulating Parties agree they will not seek to prevent entry into the record of any testimony that the withdrawing party submitted prior to surrebuttal testimony related to the Municipal rate to the extent the recommendation contained in such prior testimony related to the Municipal rate has been withdrawn through surrebuttal testimony.
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Stipulating parties:

For the City of Pittsburgh:	_____	Date:
For the Pittsburgh Water & Sewer Authority:	_____	Date:
For the Bureau of Investigation & Enforcement:	 _____	Date: 8/21/20
For the Office of Consumer Advocate:	_____	Date:
For the Office of Small Business Advocate:	_____	Date:

10. If a party withdraws its recommendation regarding a Municipal rate through surrebuttal testimony, the Stipulating Parties agree they will not seek to prevent entry into the record of any testimony that the withdrawing party submitted prior to surrebuttal testimony related to the Municipal rate to the extent the recommendation contained in such prior testimony related to the Municipal rate has been withdrawn through surrebuttal testimony.
11. This Stipulation is without admission or prejudice in any other part of these rate proceedings and in any future rate proceeding.
12. The Stipulating Parties request that this stipulation be approved and made part of the record.
13. This Stipulation may be executed in counterparts, which shall together constitute one and the same stipulation agreement.

Stipulating parties:

For the City of Pittsburgh:	<u>Thomas J. Sniatak</u>	Date: 8/21/20
For the Pittsburgh Water & Sewer Authority:	_____	Date:
For the Bureau of Investigation & Enforcement:	_____	Date:
For the Office of Consumer Advocate:	<u>Christine Maloni Hoover</u>	Date: 8/21/20
For the Office of Small Business Advocate:	_____	Date:

Party-by- Party Compliance With Paragraph 8

**Status Report for Each Party's Plan for Complying With Paragraph 8 of the
Stipulation Recognizing Impact of Act 70 Upon PWSA's Municipal Rate Proposal**

The Pittsburgh Water and Sewer Authority

On September 17, 2020, PWSA withdrew the proposals set forth in its Supplemental Direct Testimony addressing issues governed by the Cooperation Agreement and reverted to its initial proposals as set forth in its March 6, 2020 initial filing. To effectuate the withdrawal of its revised positions regarding City Cooperation issues, PWSA redacted the relevant portions of its Supplemental Direct Testimony and served copies of the revised Supplemental Direct Testimony, as indicated below.

Witness	St. No.	Redacted Version?
Robert A. Weimar	St. No. 1-SD As Revised due to passage of Act 70	Yes
Debbie M. Lestitian	St. No. 2-SD As Revised due to passage of Act 70	Yes
Jennifer Presutti	St. No. 3-SD As Revised due to passage of Act 70	Yes
Barry King, P.E.	St. No. 4-SD	No
Edward Barca	St. No. 5-SD	No
Thomas F. Huestis	St. No. 6-SD	No
Harold J. Smith	St. No. 7-SD As Revised due to passage of Act 70	Yes
Julie Quigley	St. No. 8-SD As Revised due to passage of Act 70	Yes
Beth Dutton	St. No. 9-SD	No

PWSA is not proposing any changes to its subsequently served written testimony (rebuttal and rejoinder) as a result of Act 70.

Bureau of Investigation and Enforcement

Pursuant to Paragraph 8(iv) of the Stipulation, I&E has elected the option of addressing the portions of its pre-submitted testimony and exhibits that are withdrawn by way of surrebuttal testimony. Specifically, in their respective pieces of surrebuttal testimony, I&E witnesses Spadaccio, Cline, and Kubas reflected updates of their positions to account for passage of Act 70. In addition, these witnesses testified substantively as to the withdrawal of any positions in direct testimony that conflicted with the subsequently-passed Act 70. I&E notes that witness Patel's testimonies were not impacted by Act 70. Finally, I&E notes that it negotiated with all Stipulating Parties to ensure that its method of addressing Act 70 would be a mutually acceptable way to reflect the imposition of Act 70 upon its case.

Office of Consumer Advocate

OCA determined that no action by OCA is necessary to comply with Paragraph 8 of the Stipulation Recognizing Impact of Act 70 Upon PWSA’s Municipal Rate Proposal.

Office of Small Business Advocate

The OSBA intends to withdraw Exhibit BK-1 in OSBA Statement No. 1.

City of Pittsburgh

The City of Pittsburgh intends to withdraw the following testimony from The City of Pittsburgh’s Statement. No. 2 (Direct Testimony of Howard J. Woods, Jr., P.E.):

Page: line numbers

9:16 – 10:3 including footnote 3

10:5-12

17:4-10

19:18-22

22:14-24:13 including footnote 10

Pittsburgh UNITED

Pittsburgh UNITED is not a party to the Stipulation regarding to Act 70 and is not making any revisions to its previously served testimony pursuant to the Stipulation or as a result of revisions made by the other parties due to the Stipulation.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017951 (water)
	:		C-2020-3019348
v.	:		C-2020-3019305
	:		
Pittsburgh Water and Sewer Authority - Water	:		
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	:		
Pittsburgh Water and Sewer Authority - Wastewater	:		
	:		
Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to Authorize the Pay-As-You-Go Method of Financing	:	Docket Nos.	P-2020-3019019
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**DIRECT TESTIMONY OF
HOWARD J. WOODS, JR., P.E.**

**ON BEHALF OF
THE CITY OF PITTSBURGH**

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1. STATEMENT OF QUALIFICATIONS

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is Howard J. Woods, Jr. and my address is 49 Overhill Road, East Brunswick, New Jersey 08816-4211.

Q. BY WHOM ARE YOU EMPLOYED?

A. I am an independent consultant and the City of Pittsburgh ("City") has engaged me in this matter.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL QUALIFICATIONS.

A. I hold a Bachelor of Civil Engineering from Villanova University (1977) and a Master of Civil Engineering with a concentration in water resources engineering also from Villanova University (1985). I am a registered professional engineer in New Jersey, New York, Maryland, Pennsylvania, Delaware, and New Mexico. I am also licensed to perform RAM-WSM security assessments of public water systems. I am an active member of the American Society of Civil Engineers, the National Ground Water Association, the American Water Works Association, the Water Environment Federation, and the International Water Association.

Q. HAVE YOU PROVIDED TESTIMONY IN UTILITY MATTERS ON PRIOR OCCASIONS?

1 A. Yes. I have testified in numerous rate setting proceedings and quality of service evaluations
2 in matters before the Public Utility Commissions in New Jersey, New York, Connecticut,
3 Delaware, Pennsylvania, and Kentucky. The focus of my testimonies is on matters involving
4 revenue requirement, utility operations, system acquisitions, planning, and engineering.
5

6 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

7 A. A detailed description of my professional experience is provided in Appendix A of this
8 Testimony. In summary, I have over 43 years' experience in the planning, design,
9 construction, and operation of water and wastewater utility systems. I have worked for a
10 Federal regulatory agency, a large investor-owned water and wastewater utility, a firm
11 engaged in contract operations of municipally owned water and wastewater utilities, and
12 in engineering and operational consulting for the water and wastewater industry. During
13 my career, I have been responsible for all operations functions including regulatory
14 compliance, water production, distribution, and maintenance services as well as wastewater
15 collection and treatment. I have evaluated numerous water and wastewater acquisitions, and
16 I have advised clients on the sale or acquisition of these systems.
17

18 **2. SCOPE AND PURPOSE OF TESTIMONY**

19 **Q. MR. WOODS, PLEASE DESCRIBE YOUR AREA OF RESPONSIBILITY IN THIS**
20 **MATTER.**

21 A. The City engaged me to review the Cooperation Agreement Between the City of Pittsburgh
22 and the Pittsburgh Water and Sewer Authority dated October 3, 2019 (the "2019

1 Agreement”) and offer an opinion regarding the equity of the cost sharing strategies
2 embodied in the 2019 Agreement.

3

4 **Q. WHAT MATERIALS HAVE YOU REVIEWED IN DISCHARGING THIS**
5 **ASSIGNMENT?**

6 A. I have reviewed the Capital Lease Agreement dated July 15, 1995, the Cooperation
7 Agreement dated June 15, 1995, and the 2019 Agreement. I have also reviewed the audits
8 for the City titled City of Pittsburgh, Pennsylvania, Comprehensive Annual Financial Report,
9 Year Ended December 31, 1995 and the City of Pittsburgh, Pennsylvania, Comprehensive
10 Annual Financial Report, Year Ended December 31, 2019. In addition, I reviewed the Direct
11 Testimony of Ms. Debbie M. Lestitian, which is marked as PWSA St. No. 1 in this matter
12 and the Supplemental Testimony of Mr. Harold J. Smith, which is marked as PWSA St. No.
13 7-SD in Docket Nos. R-2020-3017951 and R-2020-3017970. I have also reviewed the
14 testimonial statement of Mr. Daniel Gilman on behalf of the City. Finally, I also reviewed
15 the Commission's Order in Docket Nos. M-2018-2640802 and M-2018-2640803 and the
16 Commonwealth Court Decision in Lloyd v. Pennsylvania Public Utility Commission.

17

18 **Q. ARE YOU SPONSORING ANY EXHIBITS?**

19 A. No.

20

1 **3. CITY AND PWSA RELATIONSHIP**

2 **Q. PLEASE DESCRIBE YOUR UNDERSTANDING OF THE HISTORY OF THE**
3 **PITTSBURGH WATER AND SEWER AUTHORITY ("PWSA") AND ITS**
4 **RELATIONSHIP WITH THE CITY.**

5 A. It is my understanding that the PWSA was incorporated in February 1984 under the
6 Municipality Authorities Act of 1945 to assume responsibility for the operation and
7 improvement of the City's water distribution and wastewater collection systems. In 1984,
8 pursuant to a Lease and Management Agreement, PWSA leased the entire City water
9 supply, distribution, and wastewater collection system ("System") from the City and
10 assumed responsibility for establishing and collecting user fees and charges and for
11 maintaining and improving the System. The Lease and Management Agreement provided
12 for the City to operate and maintain the System for PWSA subject to the general
13 supervision of PWSA.

14 I also understand that the City and PWSA agreed to terminate the 1984 Lease and
15 Management Agreement in July 1995 after having entered into a Cooperation Agreement
16 in June of 1995. The June 1995 Agreement had an effective date of January 1, 1995. The
17 1984 Lease was subsequently terminated and replaced with a new Capital Lease
18 Agreement on July 15, 1995. The effect of the 1995 Cooperation Agreement and the 1995
19 Capital Lease Agreement was to substantially transfer financial and management
20 responsibility for the System to PWSA. The agreement and the Lease taken together
21 represent the *quid pro quos* of the transition from the City owning and operating the
22 systems to PWSA assuming these functions and responsibilities. Consequently, an action
23 to strip any of the *quid pro quos*, which were the product of the give and take negotiation

1 referenced by City witness Daniel Gilman, would retroactively frustrate the total overall
2 deal negotiated by two sophisticated parties. For example, as Mr. Gilman noted, if you
3 strip away the City's rights to water from a Cooperation Agreement, then the Lease amount
4 would have been higher to offset what the City would be required to pay. My point is it
5 would be unfair and inadvisable to ignore that the two negotiated documents are
6 intertwined and interdependent to effectuate a negotiated transition, or in fact, an
7 acquisition of the systems by PWSA.

8 Under the terms of the 1995 Cooperation Agreement, City Water Department employees
9 became employees of the PWSA. As a result, the PWSA assumed various obligations from
10 the City. The City and the PWSA provided various services to each other in accordance
11 with the Cooperation Agreement, and the PWSA reimbursed the City for direct and indirect
12 costs attributed by the City to the operation and maintenance of the System.

13 Also, under the terms of the 1995 Cooperation Agreement, PWSA provided up to 600
14 million gallons of water annually for the City's use without charge. This volume of water
15 was available to the City for its use at facilities like the City public swimming pools and
16 the uses of its instrumentalities, such as the Pittsburgh Zoo. Also, the PWSA assumed the
17 City's obligation for the cost of subsidizing water service to those residents of the City
18 situated beyond PWSA's service area and served by Pennsylvania American Water
19 Company, so that those water users pay charges that mirror the rates of PWSA.

20 The City has retained the pension obligation for PWSA's employees who participate in the
21 City's Municipal Pension Plan. The extent of PWSA's participation in such obligation with
22 respect to these employees whose membership continued upon becoming employees of

1 PWSA is determined by the shared interpretation of the City and the PWSA of the intent
2 of the Cooperation Agreement.

3 The 1995 Cooperation Agreement obligated PWSA to set rates at levels sufficient to
4 recover the cost of operations and maintenance of the System and to recover the debt
5 service obligations of PWSA. The credit and taxing power of the City was not to be used
6 to satisfy any Authority indebtedness and the City was no longer responsible for any
7 Authority debt payments. While the City owns the assets, it continues to bear legal and
8 business risk for any claims and lawsuits brought against the City or Authority relative to
9 the systems, service to other customers, and assets. This situation will continue up and
10 through 2025 when the ownership would change to PWSA. In a real sense, the City is
11 distinguishable as a customer or user of PWSA and bears financial exposure and risk that
12 no other customer has to bear. Given this, the City is unique, and this is one of many
13 reasons for treating the City different than other customers because it is different.

14 The term of the 1995 Cooperation Agreement was 40 years from the effective date, which
15 was January 1, 1995. Both parties had a right to terminate the agreement with 90 days'
16 notice to the other.

17 On February 4, 2019, PWSA's Board issued a resolution that the existing Cooperation
18 Agreement shall be terminated in accordance with the terms of the agreement, 90 days after
19 the approval of the resolution. City and PWSA officials have collaborated on and
20 negotiated a new Agreement, the 2019 Agreement, which has been filed with the
21 Commission for review in this proceeding.

1 The 1995 Capital Lease Agreement (the "1995 Lease") remains in effect. The 1995 Lease
2 commenced on July 15, 1995 and has a term of 30 years. The 1995 Lease terminated the
3 prior 1984 Lease and Management Agreement. The 1995 Lease established a series of
4 System rental payments due from the PWSA to the City totaling \$101,416,974.60. This
5 sum included \$5,399,725 in prepayments plus payments of \$35,000,000 to be made by July
6 25, 1995, two payments of \$20,000,000 each to be made on January 2, 1996 and August 1,
7 1996, and a final payment of \$21,017,249.60 due on January 2, 1997. It is my
8 understanding that these payments have been made. The lease terminates on September 1,
9 2025, and on that date, PWSA has the option to acquire the System for the additional
10 payment of one dollar (\$1.00).

11 The 1995 Lease and the 1995 Cooperation Agreement comprise the terms and conditions
12 whereby the PWSA would acquire the System from the City. It is my opinion that the two
13 agreements, taken together, are the result of careful negotiations between two sophisticated
14 parties that carefully balance costs and expenses borne by each party and ultimately the
15 City taxpayers and all PWSA rate payers.

16
17 **Q. IS IT YOUR UNDERSTANDING THAT THE CITY IS THE OWNER OF THE**
18 **SYSTEM ASSETS COMPRISING THE PWSA?**

19 **A.** Yes, I believe that is correct. The City financial audits recognize that the City appoints the
20 Board of PWSA, and the City includes PWSA as a component unit in its financial
21 statements.

22
23 **Q. WHAT IS THE COMPOSITION OF THE PWSA BOARD?**

1 A. The PWSA Board has a maximum of seven members, consisting of one City Council
2 member, the City Treasurer, the City Finance Director, and four members chosen by the
3 Mayor. Currently, there are six sitting Board members. Board members have a
4 responsibility to act in the interests of the PWSA.

5
6 **Q. AS A COMPONENT UNIT, HOW ARE THE ASSETS OF THE PWSA**
7 **REFLECTED IN THE CITY'S FINANCIAL STATEMENTS?**

8 A. The financial statements separately identify component units like PWSA. PWSA is
9 reflected on the Combining Statement of Net Position with \$998,895,000 in utility assets,
10 \$12,181,000 in non-utility assets, and \$135,287,000 in construction work in progress.
11 Accumulated depreciation amounts to \$315,785,000. Thus, the net capital asset value is
12 \$830,578,000.¹

13
14 **Q. HOW HAS THE NET CAPITAL ASSET VALUE CHANGED SINCE 1995 WHEN**
15 **THE 1995 LEASE WAS EXECUTED?**

16 A. At the start of 1995, the net capital asset value of PWSA was \$172,456,000.² Given that
17 annual depreciation of these assets was recorded at \$4,206,000, the current depreciated
18 value of the 1995 assets can be estimated at \$67,306,000, and at the term of the 1995 Lease,
19 this value will be further reduced to \$46,276,000. The current net capital asset value
20 reflected on the City's component unit balance sheet shows the significant investments
21 made by PWSA since 1995. However, it is apparent that the PWSA has benefited from

¹ City of Pittsburgh Pennsylvania, Comprehensive Annual Financial Report for the Fiscal Year Ended December 31, 2019; Fund Financial Statements; p. 18.

² City of Pittsburgh Pennsylvania, Comprehensive Annual Financial Report for the Fiscal Year Ended December 31, 1995; p. 139.

1 the 1995 Lease simply because it was able to acquire the use of \$172,456,000 in net utility
2 assets at a bargain price of \$101,416,975.

3

4 **Q. IS THE RELATIONSHIP BETWEEN THE CITY AND PWSA TYPICAL OF**
5 **OTHER MUNICIPAL UTILITIES AUTHORITIES?**

6 A. Yes. The City is the owner of the assets and it appoints the governing body of its Authority.
7 In addition, both the PWSA and the City take advantage of certain shared services and
8 functions to the mutual benefit of taxpayers and ratepayers. In other circumstances, it is
9 common to find that the Authority and creating municipality share services and expenses
10 for things like insurance, fleet maintenance, energy purchasing, pension and benefit
11 programs, and other support services. It is also common to see arrangements where the
12 utility authority does not isolate public fire protection as a cost center. In such cases, public
13 fire hydrant charges are not billed to the creating municipality. Similarly, water use at
14 municipal facilities is often an authorized but unbilled use.

15

16 **Q. HAS THE COMMISSION PROVIDED ANY GUIDANCE TO THE CITY**
17 **REGARDING THE RELATIONSHIP THAT SHOULD EXIST BETWEEN THE**
18 **CITY AND PWSA GOING FORWARD?**

19 A. Yes. While I am advised by counsel that there may be legal defects in the Commission's
20 Opinion and Order in Dockets M-2018-2640802 and M-2018-2640803, the Commission
21 noted that the Parties agreed that the following principles should be incorporated in the
22 new Cooperation Agreement: (a) any payments to the City must be just, reasonable, and
23 substantiated; (b) the City and the PWSA's relationship should be conducted on an arm's

1 length "business-like" basis; and (c) services provided by the City to the PWSA, and vice
2 versa, should be identified with detailed breakdown and be charged based on the related
3 cost of service.³

4
5 **Q. DID THE COMMISSION ADDRESS ANY OTHER AREAS REGARDING THE**
6 **RELATIONSHIP BETWEEN THE CITY AND PWSA?**

7 A. Yes, in Dockets M-2018-2640802 and M-2018-2640803, the Commission also addressed
8 the existence of unmetered City accounts and properties, and directed PWSA to include
9 the cost of meter installation in its capital improvement programs and to consider and
10 propose the implementation of a municipal customer class with both flat and metered rates.
11 This would allow PWSA to begin billing the City for service at least on a flat rate basis
12 pending the installation of meters at these locations.

13
14 **Q. IS THERE ANYTHING IN THE RECENT FINANCIAL HISTORY OF THE CITY**
15 **THAT YOU FEEL IS RELEVANT TO THE ANALYSIS AND REVIEW OF THE**
16 **2019 AGREEMENT?**

17 A. Yes. According to the City's 2019 Financial Report, it is a fact that the City has only
18 recently (February 13, 2018) exited Act 47⁴ Status and shed its designation as a financially
19 distressed municipality.⁵ This is a significant accomplishment. However, the City finds
20 itself challenged, as many communities are, by the Covid-19 Pandemic, a condition that

³ Order and Opinion in Dockets M-2018-2640802 and M-2018-2640803, p. 31.

⁴ The Municipalities Financial Recovery Act, Act 47 of 1987, was enacted to provide a broad-based program of fiscal management oversight, technical assistance, planning, and financial aid to municipalities experiencing severe fiscal distress. Pittsburgh has operated under Act 47 status for 14 years, entering on December 29, 2003.

⁵ City of Pittsburgh, Pennsylvania, Comprehensive Annual Financial Report, Year Ended December 31, 2019, Management's Discussion and Analysis, p. xiii.

1 has caused the Governor to declare a state of Fiscal Emergency in at least one other
2 Pennsylvania city.⁶ None of this appears to have been considered in the Commission
3 Orders or by the Bureau of Investigation & Enforcement, who I understand is supposed to
4 determine what is best for all sectors of the public, which would include the City.

5
6 **4. THE 2019 COOPERATION AGREEMENT**

7 **Q. HAVE YOU REVIEWED THE 2019 COOPERATION AGREEMENT AND DO**
8 **YOU BELIEVE THAT IT IS FAIR AND REASONABLE?**

9 A. Yes. I have reviewed the 2019 Agreement, and it is my opinion that it strikes a fair and
10 reasonable balance of the needs of the City and its taxpayers and the PWSA and its
11 ratepayers. I believe that the 2019 Agreement maintains the *quid pro quos* the parties
12 negotiated and are willing to accept to effectuate a transfer of the System to PWSA.

13
14 **Q. DO YOU BELIEVE THAT THE 2019 AGREEMENT INCORPORATES THE**
15 **PRINCIPLES DETAILED BY THE COMMISSION IN ITS OPINION AND**
16 **ORDER IN DOCKETS M-2018-2640802 AND M-2018-2640803?**

17 A. Yes, I believe that the 2019 Agreement establishes a relationship between the City and
18 PWSA that is founded on a business-like approach to transactions between the two entities
19 and that the 2019 Agreement will facilitate the PWSA transition to full compliance with
20 Commission rules and policies. Furthermore, I believe that the principles embodied in the
21 2019 Agreement will provide a fair and reasonable guide to the ongoing relationship
22 between the City and PWSA that will need to exist beyond the termination of the 1995

⁶ City of Chester Declaration of Fiscal Emergency and Concise Statement of Facts (2020-04-13).

1 Lease in September 2025. At that point in time, PWSA will continue to exist as a
2 Pennsylvania Municipal Utilities Authority created by the City.

3

4 **Q. PLEASE EXPLAIN YOUR LAST STATEMENT FURTHER.**

5 A. The City is the incorporating municipality for PWSA and in fact, has recently acted to
6 amend and extend the Articles of Incorporation for the PWSA. Effective February 6, 2020,
7 the City approved an Amendment to the Articles of Incorporation of the PWSA to extend
8 its term of existence to a date that is fifty (50) years from the date of the approval of the
9 Amendment to Articles of Incorporation by the Secretary of the Commonwealth of
10 Pennsylvania and adding stormwater planning, management, and implementation to the
11 purposes of the Authority. The City will continue to exercise a governance function over
12 the PWSA by addressing issues such as this, and it will continue to be the entity responsible
13 for appointing members of the PWSA Board. In addition, there are numerous day-to-day
14 operational issues affecting both the City and PWSA that require coordination and present
15 opportunities for synergies that will benefit taxpayers and ratepayers. The 2019 Agreement
16 provides a fair and reasonable framework between the City as the incorporating
17 municipality and PWSA as the water and sewer service provider.

18

19 **Q. HOW DOES THE 2019 AGREEMENT BROADLY DEFINE THE**
20 **RELATIONSHIP BETWEEN THE CITY AND PWSA?**

21 A. The recitals of the 2019 Agreement set out broad principles of agreement between the two
22 entities. For example, the recitals memorialize the agreement of the City and PWSA to
23 ensure that the System remains under public ownership and control. The recitals also

1 confirm the intent of both parties to ensure that payments between the parties are based on
2 actual, verifiable, direct expenses developed in accordance with customary utility practice.
3 Additionally, the 2019 Agreement memorializes the intent of the parties to cooperate on
4 projects that may impact one another. For example, PWSA sewer or water line
5 construction, valve replacements, manhole restoration and service renewals and
6 replacements all have the potential to adversely impact City street and right-of-way
7 maintenance activities. Likewise, City street paving can impact PWSA asset planning and
8 renewal programs. The 2019 Agreement also defines the PWSA System and notes the
9 existence of combined sanitary and storm sewers, separate sanitary and stormwater
10 collection and conveyance systems as well as water supply, treatment, transmission, and
11 distribution facilities and the role of PWSA in maintaining, operating, renewing, and
12 replacing these assets.

13
14 **Q. DOES THE 2019 AGREEMENT OBLIGATE PWSA OR THE CITY TO**
15 **PURCHASE SERVICES, ONE FROM THE OTHER?**

16 A. No. While the Section 3 of the 2019 Agreement enumerates certain services that may be
17 provided by the City to PWSA, for example, PWSA is not obligated to purchases these
18 services exclusively from the City.

19
20 **Q. DOES SECTION 3 OF THE 2019 AGREEMENT OBLIGATE PWSA TO PAY FOR**
21 **50% OF THE COST OF CITY STREET SWEEPING?**

22 A. Yes, it does.

1 **Q. DO YOU BELIEVE IT IS FAIR AND REASONABLE TO ALLOCATE 50% OF**
2 **THE STREET SWEEPING EXPENSE TO PWSA?**

3 A. Yes, especially given PWSA's responsibilities with respect to the operation and control of
4 Combined Sewers and PWSA's responsibilities for stormwater management. Given that
5 combined sewers and storm sewers drain stormwater runoff from streets and given that the
6 USEPA minimum controls for combined sewer overflows ("CSO") and permitting
7 requirements for Municipal Separate Storm Sewer Systems (commonly called "MS4"
8 systems), it would have been reasonable for 100% of the cost of street sweeping, including
9 the capital cost of street sweeping equipment and vehicles, to be assigned to PWSA. Street
10 sweeping is one of the principal means of capturing plastics, floatables, and other solids
11 before these objectionable materials become part of the water flow regime and must be
12 addressed through CSO controls or otherwise recovered in the receiving streams. In this
13 case, I believe the 2019 Agreement provides a clear benefit to PWSA and its ratepayers by
14 shifting 50% of the cost to City taxpayers.

15
16 **Q. WHAT IS THE 2019 AGREEMENT DOING TO ADDRESS THE MAINTENANCE**
17 **AND OPEATION OF WATER AND SEWER MAINS AND SERVICE LATERALS?**

18 A. Historically, the City maintained these assets and did not bill itself for work done. With
19 respect to City properties, the 2019 Agreement moves to put the City on the same footing
20 as other similar customers while recognizing the need to transition in a gradual but
21 deliberate way. By 2025, the City will be treated in the same fashion as typical commercial
22 customers in that the City will be fully responsible for the operation, maintenance, repair,
23 and replacement of water and sewer service laterals. At present (2020), these costs are

1 absorbed by PWSA in the fashion of the traditional methods used by the City and then by
2 PWSA. In 2021, the City will begin sharing in these costs at a rate of 20% of the actual
3 cost and each year thereafter the allocation to the City will increase by 20% until the full
4 cost is borne by the City in 2025, the year that the 1995 Lease expires and PWSA takes
5 full ownership of the System assets.

6
7 **Q. IS IT APPROPRIATE TO GRADUALLY TRANSITION, IN THE INCREMENTS**
8 **DETAILED IN THE 2019 AGREEMENT, FROM PWSA BEARING THE COST**
9 **OF SERVICE LATERAL MAINTENANCE TO THE CITY BEARING THIS COST**
10 **IN 2025?**

11 A. The use of a deliberate but gradual transition to City funding of service lateral maintenance
12 for City properties is appropriate. This will put the City on the same footing as other PWSA
13 commercial customers in a short period of time. The parties to the 2019 Agreement have
14 negotiated and agreed to a specific timeline that is realistic, achievable, and avoids that
15 potential budgetary shock of suddenly shifting this cost to the City.

16
17 **Q. IS IT TYPICAL FOR CUSTOMERS TO BEAR THE COST OF SERVICE LINE**
18 **MAINTENANCE, REPAIRS, AND REPLACEMENTS?**

19 A. Generally speaking, where investor-owned utilities are concerned, the cost of service line
20 maintenance, repair, and replacement is divided at the property line. That is, the utility is
21 responsible for the portion of the service line that exists in the public right-of-way, and the
22 customer is responsible for the portion of the line on private property (or municipal
23 property in the case of a public customer). In municipal authority systems and municipal

1 water department systems, the point of demarcation that I have described for investor-
2 owned utilities is also followed, but this is not a universal practice. In many cases, the
3 customer owns and maintains the entire service line from the customer's premises to the
4 water or sewer line in the street. It is my understanding that PWSA uses a hybrid approach
5 where the investor-owned model is followed for residential services, but the municipal
6 approach is followed for commercial customers. Given that this is PWSA's customary
7 practice, the approach taken in Section 5.2 of the 2019 Agreement is proper, just, and
8 reasonable.

9
10 **Q. ARE THERE ANY EXCEPTIONS TO THIS PRACTICE?**

11 A. Yes, in Saw Mill Run (Section 5.3 of the 2019 Agreement), the municipal model is
12 employed and the customer is responsible for service lateral maintenance and repairs. This
13 reflects an arrangement in the 1995 Cooperation Agreement wherein the City, not the
14 Authority, was responsible for the maintenance, repair, and replacement of the mains and
15 laterals in Saw Mill Run. By contrast, in the 2019 Agreement, PWSA is responsible for
16 the sewer and water mains, as they are throughout the System, but the customers will be
17 responsible for the full extent of the service laterals.

18
19 **Q. DOES SECTION 5.2.1 ADDRESS UNMETERED CITY SERVICES?**

20 A. Yes. This section of the 2019 Agreement indicates that City service lines that are not
21 metered will be provided with a meter. Further, this section of the 2019 Agreement
22 indicates that the City will share equally in the cost of metering these services. This would

1 have brought the combined resources of the City and PWSA to bear on the problem of
2 numerous unmetered City services.

3

4 **Q. HAS THE COMMISSION ISSUED AN ORDER THAT IMPACTS THIS PORTION**
5 **OF THE AGREEMENT?**

6 A. Yes, in Docket Nos. M-2018-2640802 and M-2018-2640803, the Commission noted that
7 PWSA would be discriminating against its non-City customers by sharing the meter
8 installation cost with the City. Thus, unless the Commission reverses this decision and
9 allows the 2019 Agreement to stand, the cost of meter installation will need to be incurred
10 solely by PWSA and recovered from all of its customers.

11

12 **Q. WHAT IS THE IMPORT OF SECTION 6.1 OF THE 2019 AGREEMENT?**

13 A. Historically, the difference in water rates and charges from Pennsylvania American Water
14 Company and PWSA was material. Pittsburgh residents and businesses located in 29th,
15 30th, 31st, and 32nd wards and portions of the 16th, 18th, 19th, 20th, and 28th wards served
16 by Pennsylvania American Water Company paid more for service than similar customers
17 elsewhere in Pittsburgh who are served by PWSA. The City and PWSA subsidized the
18 cost of service in the Pennsylvania American Water Company service area. That
19 arrangement is described in Section 6.1 of the 2019 Agreement.

20

21 **Q. IS SECTION 6.1 OF THE AGREEMENT STILL EFFECTIVE?**

1 A. It is my understanding and belief that the Water Rate Subsidy Agreement, which was
2 assigned to PWSA, has now been canceled. This section of the 2019 Agreement is no
3 longer of any effect.

4
5 **Q. PLEASE EXPLAIN SECTION 6.2 OF THE 2019 AGREEMENT.**

6 A. This portion of the 2019 Agreement addresses the free allowance for water historically
7 enjoyed by the City and its instrumentalities, which was part of the overall transition terms
8 and conditions contained in the June 1995 Cooperation Agreement and the July 1995
9 Lease. In addition, this section of the 2019 Agreement, while it contains concessions by
10 the City from the 1995 Cooperation Agreement, provides for a deliberate and gradual
11 transition to full cost pricing for metered service to City properties, like the public City
12 swimming pools and parks, and to City affiliates like the Pittsburgh Zoo, which are
13 collectively referred to as Third Party Users. First, effective January 1, 2020, the free
14 allowance of 600 million gallons per year has been eliminated by the 2019 Agreement.
15 The provision of a finite annual quantity of water without charge from PWSA to the City
16 between 1995 and the end of 2019 should be viewed together with the terms of the 1995
17 Lease Agreement that gave PWSA access to and control of the System at a bargain price.
18 While the 2019 Agreement reallocates *quid pro quos* in the original interdependent 1995
19 Cooperation Agreement and the 1995 Lease, it provides reasonable and appropriate
20 gradualism under the unique circumstances here. This is the result of business-like
21 negotiations between the parties. This is preferable to a third party picking and choosing
22 which key terms of this agreement they dislike and disturbing the agreement to a point
23 where it is unacceptable to either or both parties. I would note that the 2019 Agreement is

1 presently written to survive past the gradualism period. If the City were not to provide the
2 services and opportunities for cost savings found in the 2019 Agreement, that ultimately
3 would be bad for ratepayers. Many of PWSA's customers are also City taxpayers who
4 could be subject to higher taxes on the tail of the City's emergence from Act 47 and the
5 depressed tax collections or revenues due to the Covid-19 shutdowns or reductions in
6 business.

7 After eliminating the 600 million gallons per year free allowance for the City, Section 6.2
8 goes on to describe a gradual and deliberate approach to phasing-in the rates to be paid by
9 the City for metered service. The 2019 Agreement sets out a schedule of declining
10 discounts wherein the City would pay 20% of the established rate in 2020, 40% of the
11 established rate in 2021, and so on, until the full rate is charged in 2024, nearly 2 years
12 before the 1995 Lease expires in September 2025 and PWSA becomes the owner of the
13 leased assets. In my opinion, I can say with certainty as an expert in my field that this
14 phase-out is just and reasonable under the unique facts presented and does not constitute
15 an unreasonable preference or unreasonable discrimination given the facts and
16 circumstances here.

17
18 **Q. DOES THE EXISTING PWSA TARIFF HAVE A RATE FOR MUNICIPAL**
19 **CUSTOMERS?**

20 A. No, it does not. It is my understanding and belief that the parties to the 2019 Agreement
21 assume that the existing commercial rates would apply to City connections and that the
22 graduated scale in Section 6.2 would apply to the Commercial rates.

1 **Q. IN YOUR OPINION, IS THE GRADUATED IMPLEMENTATION SCALE IN**
2 **SECTION 6.2 JUST AND REASONABLE?**

3 A. Yes, I believe it is fair, just, and reasonable. It is not an unreasonable preference or
4 unreasonable discrimination due to the circumstances here. Over its history, the City of
5 Pittsburgh Water Department and more recently, the PWSA have not charged the City for
6 service. This is a typical municipal practice. It is also comparable to investor-owned
7 utilities that record use in utility-owned facilities as an authorized but unbilled use.
8 However, given that the PWSA will become the owner of all System assets in 2025 and
9 that PWSA is now regulated as a result of Act 65 of 2017, it is reasonable to take
10 affirmative steps to comply with the Public Utility Code. Section 6.2 of the 2019
11 Agreement provides a deliberate means of moving the City from a point where it has not
12 paid for water service to a point where the City properties are billed the full rate for service
13 provided. The 2019 Agreement embodies the principle of gradualism by moving the
14 effective rates charged by PWSA from zero to the full rate in a relatively short period of
15 time of only five years.

16
17 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY THE TERM “GRADUALISM.”**

18 A. Gradualism is a critical principle of rate making which attempts to balance the potential
19 adverse effects of large and dramatic changes in rates with the need to set rates that recover
20 the revenue requirement from the classes of customers who cause the cost. In *Lloyd v. Pa.*
21 *PUC*, 904 A.2d 1010, 1015 (Pa. Cmwlth. 2006) (*Lloyd*), “rate shock” is a phrase used to
22 describe the public outcry associated with rate increases, while “gradualism” is the concept

1 that rates should be gradually increased over longer periods of time to prevent customers
2 from experiencing rate shock.⁷

3

4 **Q. CAN YOU GIVE AN EXAMPLE OF THE WAY IN WHICH THE COMMISSION**
5 **HAS APPLIED GRADUALISM IN RATE SETTING?**

6 A. Yes. In its most recent decision related to Aqua Pennsylvania Water base rates, the
7 Commission acknowledged that the settled rate design embodied the principle of
8 gradualism in the way in which it continued a long-running effort to consolidate rate groups
9 serviced by the Company.⁸ In this matter, the Commission agreed to the consolidation of
10 22 water rate divisions into 14 rate divisions and of those 14, twelve divisions were grouped
11 into three Rate Zones because of their similarity in rate design. The rates of all of the rate
12 divisions that will continue to exist under the Settlement Rates have been moved closer to
13 each other and to the Rate Zone 1 in order to facilitate further consolidation with the Main
14 Division in future cases. The Order in the Aqua base rate case was issued on May 9, 2019.
15 The base rates that were adjusted by the Commission's Order on May 9, 2019 were put in
16 effect on June 8, 2012. Aqua has publicly stated that it will most likely file a request with
17 the Commission to adjust base rates in 2021.⁹ So, from this we can see that the

⁷ From the Lloyd decision, "gradualism" is a principle of rate design that rates will be gradually increased to avoid "rate shock" in this case caused by transition from capped rates to rates set more closely to the traditional ratemaking process by "gradually" reducing rate of return differentials between the classes. Large rate increases have the potential to cause "rate shock" among customers. Technically, rate shock applies when a rate increase is associated with a significant drop in usage, reflecting the unwillingness or inability of customers to pay for those services. Due to the inelastic demand for essential services, such as utilities, any decrease in usage is minor and transitory. There is a non-technical definition of "rate shock," which is used to describe the public outcry associated with rate increases. To mitigate both forms of rate shock, the remedy is "gradualism," i.e., phasing in rates or closing rate differentials over a longer period of time allowing consumers to gradually make the adjustments in the "elastic" part of their spending so as to pay for increased utility costs, not to mention lessening the pressure on the Commission and the utilities to dampen rate increases."

⁸ Opinion and Order in Docket R-2018-3003558 at Page 58: "(13) the agreement that Aqua's revenue allocation and rate design will be done in such a way as to move all classes closer to their cost of service consistent with the principle of gradualism."

⁹ Joint Petition for Settlement in Docket A-2016-2580061 at Page 6, Para. F.

1 Commission recognizes that the consolidation of rates, with the attendant moves closer to
2 the actual cost of service for each rate class and group, are taken in discrete steps and
3 sometimes over many years. In Aqua Pennsylvania's case, this occurred in 2012, 2019,
4 and will likely continue in 2021.

5
6 **Q. HOW DOES THIS COMPARE WITH WHAT THE PARTIES TO THE 2019**
7 **AGREEMENT HAVE NEGOTIATED?**

8 A. The City and PWSA have negotiated a definitive schedule that will move the City from a
9 point of receiving free service to paying a full cost rate in only five years. The steps are
10 graduated and designed to mitigate the rate shock on the City that would otherwise occur
11 if the full Commercial rates were to be applied at once as a result of the ongoing rate
12 proceeding.

13
14 **Q. ARE YOU AWARE THAT THE COMMISSION HAS ISSUED AN ORDER THAT**
15 **REJECTS THE CONCEPT OF A DISCOUNTED RATE FOR THE CITY?**

16 A. Yes, I understand that the Commission has issued an Order in Dockets M-2018-2640802
17 and M-2018-2640803, at the behest of the Bureau of Investigation and Enforcement
18 (BI&E), that rejected a stepped-billing approach while this Section 507 Proceeding was
19 pending. The Order also opined that PWSA should propose a separate municipal rate class
20 similar to that found in Pennsylvania American Water Company's tariff.

21
22 **Q. HAS THE PWSA PROPOSED A MUNICIPAL RATE?**

1 A. In the Supplemental Testimony of Harold J. Smith in Dockets R-2020-3017951 and R-
2 2020-3017970, PWSA has in fact proposed a distinct municipal rate that would address
3 both metered and flat rate service.

4
5 **Q. DO YOU BELIEVE THAT THIS IS A REASONABLE ALTERNATIVE TO WHAT**
6 **HAS BEEN PROPOSED IN THE 2019 AGREEMENT?**

7 A. First, I believe it would be preferable to leave the 2019 Agreement, which was negotiated
8 at arms-length between the effected parties, intact. As in any negotiation, the parties have
9 the ability to fully understand their positions and balance competing objectives in ways
10 that outsiders cannot possibly hope to appreciate. A concession by PWSA to agree to a
11 five-year rate phase-in could possibly have been offset by a concession by the City to pay
12 for half of the metering cost for un-metered properties. Those of us who were not a part of
13 that negotiation will never fully know the balancing that occurred in the negotiation nor
14 will we be able to appreciate the full impact of eliminating one provision in isolation.

15 Having said that, I have reviewed Mr. Smith's proposal and I believe it is a reasonable
16 attempt to address the objections raised by BI&E in Docket Nos. M-2018-2640802 and M-
17 2018-2640803 while also placing the parties in a position similar to that created by the
18 2019 Agreement with respect to metered water and sewer rates. If Mr. Smith's proposal is
19 adopted by the Commission in Docket Nos. R-2020-3017951 and R-2020-3017970, the
20 metered billings to the City will be comparable to those that I believe would have been
21 anticipated by the 2019 Agreement. In addition, the City will be billed a flat rate for
22 unmetered accounts in 2021 at rates that will generate an additional \$280,596 in flat rate
23 water revenues and an additional \$151,394 in flat rate sewer revenues. This represents an

1 additional \$431,990 and the this will certainly impact the City's 2021 budget. As Mr.
2 Gilman has testified in his statement, this or a flash-cut to full cost of service-based rates¹⁰
3 could cause the City not to be able to open or run many programs, such as its public
4 swimming and spray pools or facilities, kids sports facilities, and playgrounds. Many of
5 these facilities are relied upon by low-income City residents who cannot afford private
6 pools or country clubs. Also, as Mr. Gilman recognizes, many City water-dependent
7 facilities, such as the zoo and aquarium, can be jeopardized absent the phase-in in the
8 Cooperation Agreement. Mr. Gilman also notes many non-residents from the surrounding
9 area visit many of these water dependent City facilities, such as the zoo and the aquarium.
10 There appears to have been no investigation by BI&E of the potential for bad consequences
11 of its positions to the City and its residents, which are part of the public interest BI&E
12 represents. The consequences of BI&E's positions are described more fully by Mr. Gilman
13 and these important facts need to be part of the record considered by the Commission.

14
15 **Q. WOULD YOU PLEASE COMMENT ON SECTION 9 OF THE 2019**
16 **AGREEMENT.**

17 A. Section 9 appears to be an attempt by the parties to further the concept that PWSA is an
18 independent Commission-regulated utility providing water and sewer service in the City.
19 Investor-owned utilities providing service in the City would, of course, be subject to the
20 Public Utility Realty Tax ("PURTA") and would remit payments to the Pennsylvania
21 Department of Revenue. The amounts would be redistributed to the City as the local taxing

¹⁰ According to the Supplemental Testimony of Mr. Harold J. Smith, the full cost of water service based on the Adjusted COSS is \$4,000,870 (Schedule HJS-14W) and the full COSS revenue requirement for sewer service is \$2,288,276 (Schedule HJS-13WW). A flash-cut to these rates, as proposed by BI&E, would result in an additional charge to the City of \$4,636,729 over present rate revenues (\$1,652,417). PWSA St No 7S-D.

1 authority. PURTA is levied against certain entities furnishing utility services regulated by
2 the Commission as PWSA is now subject to regulation. The Commonwealth imposes this
3 tax on public utility realty in lieu of local real estate taxes. Public utilities providing sewage
4 services and municipal authorities furnishing utility service are exempt from the tax.
5 Section 9 of the 2019 Agreement is predicated on the concept that PWSA's water
6 operations would be subject to PURTA because PWSA is regulated by the Commission.
7 In addition, the parties recognize that PWSA had not paid PURTA in the past and they
8 have agreed to a phase-in of the payment similar to the agreement to phase-in water and
9 sewer rates in Section 6.2. This is another area where the parties clearly attempted to apply
10 the concept of gradualism to a cost that had heretofore not been incurred.

11
12 **5. SUMMARY & CONCLUSIONS**

13 **Q. WHAT IS YOUR OVERALL OPINION OF THE 2019 AGREEMENT?**

14 A. I believe the 2019 Agreement was a fair, just, and reasonable effort to balance a number of
15 competing needs in a way that expeditiously moves PWSA to full compliance with the
16 Public Utility Code. It is neither an unreasonable preference nor unreasonable
17 discrimination given the facts and circumstances and bad consequences that could result
18 from alterations to the 2019 Agreement. In addition, I believe the 2019 Agreement
19 recognizes a continuing need for the City and PWSA to cooperate in many respects that
20 will continue after the phase-in and purchase occurs in 2025. Capital improvements
21 undertaken by each entity will impact the assets of the other, so coordination of these
22 activities is well advised and could be jeopardized if the Commission does not preserve the
23 2019 Agreement. The sanitary sewer collection network in the City includes combined

1 storm/sanitary sewers, so proper maintenance of City streets is an essential element of CSO
2 control and compliance. In addition, the PWSA has responsibilities for storm water
3 management and the activities associated with this role will impact the City's compliance
4 with its MS4 Permit. With regard to operations, for the foreseeable future, PWSA
5 employees will continue to benefit from being part of the City's pension and benefits
6 programs. Both entities will benefit from a shared approach to vehicle maintenance and
7 operations (e.g., fuel purchases).

8
9 **Q. IN YOUR OPINION DOES THE 2019 AGREEMENT EMBODY THE**
10 **PRINCIPLES OUTLINED IN THE COMMISSION'S ORDER IN DOCKET NOS.**
11 **M-2018-2640802 AND M-2018-2640803?**

12 A. Yes, the 2019 Agreement ensures that: (a) any payments to the City will be just, reasonable,
13 and substantiated; (b) the City and the PWSA's relationship will be conducted on an arm's
14 length "business-like" basis; and (c) services provided by the City to the PWSA, and vice
15 versa, should be identified with detailed breakdown and be charged based on the related
16 cost of service.

17
18 **Q. DOES THE 2019 AGREEMENT PROMOTE GRADUALISM IN THE**
19 **ESTABLISHMENT OF JUST AND REASONABLE PWSA RATES?**

20 A. Yes. The 2019 Agreement provides for a deliberate, expeditious, and gradual adjustment
21 of metered rates that would be applied to service enjoyed by the City and its Third Party
22 Users. In addition, the 2019 Agreement provides for a gradual increase in expenses that
23 would be borne by PWSA and it also provides for the sharing of capital expenses for meter

1 installations. These capital expenses would normally be borne by PWSA and recovered
2 fully in rates charged to all customers.

3

4 **Q. WHAT IS YOUR RECOMMENDATION WITH RESPECT TO THE 2019**
5 **AGREEMENT?**

6 A. It is my recommendation that the Commission accept the 2019 Agreement in its entirety
7 without modification and allow its provisions to be implemented by the City and PWSA.

8

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

10 A. Yes, and I reserve the right to supplement this testimony as this matter proceeds.

**APPENDIX A –
Qualifications Of
Howard J. Woods, Jr., P.E.**

ACCOMPLISHMENTS (CONTINUED)**HOWARD J. WOODS, JR., P.E.**

KEY EXPERIENCE

Mr. Woods has over 43 years of experience in water and wastewater utility engineering and operations. In his career, he has worked for US EPA, engineering consultants, and in numerous senior engineering and operational roles at a large investor-owned utility. His experience is well rounded, covering all aspects of public water and wastewater operations and management, including outsourcing, acquisitions, maintenance, water production, filtration, distribution, water quality, wastewater collection and treatment, regulatory compliance, and safety.

Mr. Woods managed numerous water and wastewater management contracts. He has assisted clients in outsourcing management activities and transferring ownership of complete utility systems. He has advised clients on alternative contracting approaches and reduced operating costs by renegotiating plant operations contracts. He has helped clients reduce operating expenses and he has provided expert testimony in construction arbitrations, contamination incidents, and utility rate and service proceedings.

EDUCATION

Master of Civil Engineering, Water Resources – Villanova University

Bachelor of Civil Engineering (cum laude) – Villanova University

ACCOMPLISHMENTS

- Directed and managed the procurement process leading to the sale of a municipal wastewater system in Southeastern Pennsylvania. The sale of the Upper Dublin Township Sanitary Sewer System will yield \$20,000,000 for a system serving approximately 8,000 connections and having annual revenues of \$3,000,000. Advised the Township on alternative outsourcing and contracting approaches, reduced interim operating expenses by 30% prior to the sale by renegotiating the plant operations contract.
- Prepared an analysis of ownership alternatives for Lower Makefield Township's sanitary sewer collection system. Managed a procurement process that led to the receipt of a \$17 million bid for the potential sale of a system serving 10,700 residential and commercial customers.
- Assessed an existing public private partnership contract and future contracting

ACCOMPLISHMENTS (CONTINUED)

- alternatives for the Jersey City Municipal Utilities Authority (JCMUA). Recommended alternative contract terms and assisted JCMUA in negotiating a new ten-year operations agreement saving approximately \$3,000,000 per year.
- Assisted Greater Ouachita Water Company, a non-profit Louisiana water and sewer utility, in evaluating operating contract alternatives. Provided assistance in identifying qualified operators to be invited to bid a multi-year full-service operating contract. Assisted in evaluating bids and in contract negotiations.
 - Completed an independent assessment of ownership and operating alternatives for the Township of Sparta water utility. The study evaluated current operating and financial conditions of the utility and considered two alternative service delivery approaches: contract operation and a sale of the system to an investor-owned utility.
 - Completed an assessment of the financial and operating impacts of a proposal by a Pennsylvania municipality to dissolve its municipal water and sewer authority. The authority served multiple political subdivisions and dissolution would have resulted in regulation by the Pennsylvania Public Utility Commission. The additional regulatory burdens identified and limitations on municipal financing capacity resulted in a recommendation to retain authority ownership and operations.
 - Completed an analysis of ownership alternatives for the Bristol Township Sewer Department. Reviewed capital needs and financing arrangements, rate structure and system revenues, operational costs, and regulatory compliance issues. Assessed potential interest in the acquisition of the system by other municipal and investor-owned entities and assessed the possible impact of a sale on rates and service quality. The study recommended retention of the system by the Township and offered recommendations to reduce costs and improve staffing levels.
 - Completed the assessment of a potential water utility acquisition by a Pennsylvania Municipal Authority. Assisted the Authority in developing a bid proposal for the acquisition and assessing the impact on revenue requirement and consumer rates resulting from the acquisition.
 - Provided litigation support to Cornwall Borough Municipal Authority in its efforts to prevent Cornwall Borough from dissolving the Authority. Provided expert testimony on the service and financial impacts of dissolving the Authority. Developed capital plans for the Authority and provided expert testimony regarding the need to construct certain fire protection and other distribution improvements.
 - Completed an assessment of an investor-owned utility offer to acquire the assets of Pennsylvania Municipal Water & Sewer Authority. Evaluated the acquisition and rate proposal, developed independent assessments of the value of the assets consistent with Pennsylvania Act 12, and prepared recommendations for the Authority's use in considering the proposal.
 - Completed an evaluation of the revenue requirement associated with the decommissioning of a wastewater treatment plant and the diversion of wastewater to a

ACCOMPLISHMENTS (CONTINUED)

- regional treatment works for the North Wales Water Authority. Assessed the rate impact to customers of potentially retaining and improving an existing wastewater treatment plant and the rate impact of joining a regional treatment system. The evaluation supported the decision to regionalize the sewage treatment function.
- Developed a risk assessment model for a Pennsylvania Municipal Utilities Authority to allow the Authority to prioritize investments on numerous wells threatened by regional perfluorinated compound contamination. The assessment balanced risk of contamination, cost, and feasibility of providing treatment, the use or regional alternative supplies owned by the Authority and regional interconnections/system acquisitions.
 - Assisted the Banco Gubernamental de Fomento para Puerto Rico, Autoridad para el Financiamiento de la Infraestructura de Puerto Rico and Pricewaterhouse-Coopers in developing a new operating contract for the Puerto Rico Aqueduct and Sewer Authority (PRASA). The contract was developed, bid, and awarded in less than six months, cutting the normal procurement time by nearly two-thirds. The value of the contract was \$300 million per year.
 - Completed an independent assessment of the planning and engineering decision making for a major water treatment plant renovation project undertaken by Aquarion Water Company of Connecticut in Stamford Connecticut. Evaluated process selection decisions, project sizing and regulatory compliance issues, and testified before the Connecticut Department of Public Utility Control on the findings of the evaluation.
 - Completed audits of water production operations and water quality management functions at Aquarion Water Company of Connecticut, Aquarion Water Company of Massachusetts, and Aquarion Water Company of New Hampshire. Assessed operational procedures and staffing levels, reviewed risk management plans including emergency response plans and dam safety programs, evaluated programmed and preventative maintenance systems, and developed recommendations to assist the Company in lowering the cost of service while reducing risk and improving reliability.
 - Completed an audit of the watershed and environmental management functions at Aquarion Water Company of Connecticut. Assessed watershed management, monitoring and operational procedures, reviewed compliance tracking systems, reviewed risk management strategies, and developed recommendations to assist the Company in reducing risk and improving reliability and watershed protection efforts.
 - Completed a management audit of the water distribution function at Aquarion Water Company of Connecticut. Evaluated system monitoring and maintenance practices, assessed the impact of the use of contract maintenance, and construction services to reduce Company workforce levels. Developed recommendations to improve the Company's programmed and preventative maintenance systems, corrosion control procedures, and non-revenue water control programs.
 - Completed a management audit of the engineering and planning functions at Aquarion

ACCOMPLISHMENTS (CONTINUED)

- Water Company of Connecticut. Evaluated the Company's planning practices and procedures and developed recommendations to assure the efficient application of capital to the renewal, replacement, and expansion of the Company's extensive utility plant assets.
- Assisted Greater Ouachita Water Company, a Louisiana non-profit water and sewer utility, in identifying the cause of water quality complaints resulting from poor color removal. Recommended improvements to minimize capital modifications of the chemical feed, filter backwash and spent wash water treatment systems.
 - Completed a Comprehensive Technical Assistance (CTA) project for the City of New Brunswick (NJ) Water Utility. The CTA, which was Ordered to be completed by the New Jersey Department of Environmental Protection, developed operating procedures to rectify numerous performance limiting factors that contributed to several drinking water quality issues and Safe Drinking Water Act Rules compliance issues. Completion of the CTA satisfied a major component of the Consent Order.
 - Provided ongoing technical and operations assistance to the Shelter Island Heights Property Owners Corporation related to the operation and maintenance of the community water and sewer utilities. Developed recommendations for asset maintenance and renewal as well as employee safety.
 - Completed a Vulnerability Assessment for a municipally-owned public water system in northern New Jersey. Organized, planned, and conducted the assessment using the RAM-WSM methodology. Evaluated existing physical protection systems at utility facilities, developed threat assessments and adversary sequence analyses, and prepared recommendations to reduce risk.
 - Completed an energy management evaluation for the Elmira (NY) Water Board and provided operator training on energy management strategies. Recommendations from the study allowed the client to reduce energy expenses by 30% through a series of operational modifications.
 - Completed an energy management audit of the Pittsburgh Water and Sewer Authority and identified strategies for reducing power consumption. The results of this investigation provided the foundation for the Authority and its contract manager to develop and implement more effective maintenance and operations procedures to reduce energy costs.
 - Served as an expert witness in a matter involving the diversion of service by a large commercial customer of Atlantic City Municipal Utilities Authority (ACMUA). Statistically analyzed customer water use and billing records by relating water use variables (e.g. weather, occupancy rates, and restaurant output) to recorded consumption. Identified periods of service diversion and assisted ACMUA in the collection of revenues and penalties due.
 - Served as an expert witness in a matter involving excess billing of a large commercial customer of a New Jersey public utility. Statistically analyzed usage patterns over a

ACCOMPLISHMENTS (CONTINUED)

- ten-year period and identified periods of excess billing. Assisted the customer in negotiating a \$50,000 settlement of the dispute.
- Provided litigation support in a dispute involving cost of service allocations made by Erie City Water Authority (ECWA) in establishing rates covering a ten-year period beginning in 2004. Prepared an expert report addressing the cost allocation methods used by ECWA and demonstrated that the determination of the ECWA revenue requirement was fair and reasonable and that the allocation methods used to assign costs to various rate classes were done using reasonable professional judgment and standard professional care.
 - Provided litigation support in a dispute involving water rates billed by Passaic Valley Water Commission to retail customers in the Borough of Lodi. Reviewed past rate setting practices and related rate covenants in the Lodi water system lease, prepared expert testimony and assisted the Passaic Valley Water Commission in developing rates consistent with the Court's Order.
 - Developed a rate study and assisted in the renegotiation of a sewer service agreement between Ridgefield Borough and Palisades Park Borough. The rate study formed the basis of a settlement of ongoing litigation and provided a cost allocation methodology incorporated into a new service agreement between the municipalities.
 - Developed rate studies for the Village of Ridgewood Water Utility for 2010 through 2016 to satisfy a Court Order to re-evaluate and re-adopt rate resolutions in response to a Complaint by Midland Park, Glen Rock, and Wycoff. Developed allocation factors for shared municipal services and developed the revenue requirement for each year for the Water Utility. Produced a final rate design consistent with the Court Order.
 - Developed a model of the major water resources facilities in the Passaic, Pompton, Ramapo, and Hackensack River Basins that allows the calculation of the safe and dependable yield of the Wanaque/Monksville, Point View, and Oradell Reservoir systems under varying drought conditions. The model is being used by Passaic Valley Water Commission to evaluate long-term water supply management strategies and to plan for future water supply needs.
 - Assisted New York City Department of Environmental Protection in compiling a report on the estimated safe yield of the City water supply reservoir system. A current assessment of safe yield was required by agreement of the Parties to the 1954 US Supreme Court Decree governing the use and export of water from the Delaware River Basin. Provided additional consulting assistance on plans to assure system reliability during planned repairs to the Roundout-West Branch Tunnel, an aqueduct that transports up to 800 million gallons of water per day to the City from the Delaware Basin reservoir system.
 - Developed an analysis of the costs of the Hickory Log Creek Reservoir and the yield sharing arrangements between the City of Canton and the Cobb County-Marietta Water Authority. Developed recommended methods to assess the impact of US Army Corps

ACCOMPLISHMENTS (CONTINUED)

of Engineers operating policies on future operating and capital cost allocations.

- Prepared a long-range water supply needs forecast for the Passaic Valley Water Commission. Analyzed water use patterns within the Commission's retail service area and for over two-dozen large contract customers. Produced population forecasts for the service area and individual water demand forecasts for each contract sale-for-resale customer using statistical and numeric forecasting techniques. The forecast projects total annual demand, average day, maximum month, and maximum day demands and forms the basis for other ongoing facility and operations planning efforts.
- Prepared a long-range water supply needs forecast for the North Wales Water Authority. Analyzed water use patterns within the Authority's retail service and identified the water supply requirement for the Authority's share in a regional water supply system. Produced customer forecasts for the service area and individual water demand forecasts for large industrial customers and existing and potential wholesale water customers. Applied statistical and numeric forecasting techniques to assess trends in unit water use for each customer class. The forecast projects total annual demand, average day, maximum month, and maximum day demands and forms the basis for other ongoing facility and operations planning efforts.
- Developed a Water Allocation Permit renewal and extension application for the Passaic Valley Water Commission. Secured a new 25-year permit for the diversion of surface water from the Pompton and Passaic Rivers. The new water diversion permit for the Commission supports more flexible operations and more efficient source utilization. The Commission serves a retail service population of 325,000 and effectively serves an additional 260,000 people through sale-for-resale connections.
- Prepared a cost of service allocation study for Passaic Valley Water Commission, a regional water system that serves a large urban retail service population and a significant outlying area through direct retail and wholesale water sales. Allocated costs based on standard methodologies to Owner Cities, External Cities Retail, and Wholesale classes of service. The Commission has annual revenues in excess of \$71 million.
- Prepared a cost of service allocation study for three Pennsylvania Municipal Utilities Authorities considering a joint water supply expansion project. Evaluated and allocated anticipated construction and operating costs for the plant expansion and assigned costs of existing facilities using a commodity-demand allocation method. Developed a recommended tariff design to allow for the fair recovery of prospective costs associated with the expanded facilities.
- Prepared a cost allocation study and tariff design study for Bedminster Municipal Utilities Authority. The study developed an integrated five-year financial plan for the Authority and allocated the revenue requirement among water and sewer services. Rates were developed to allow the Authority to properly recover costs from its various water and sewer customer classes.

ACCOMPLISHMENTS (CONTINUED)

- Developed a commercial rates study for Whitemarsh Township Authority that resulted in the modernization of the Authority's commercial rate structure. A system comprised of 33 different rate costs was replaced with a uniform rate structure, including a fixed service charge based on water meter capacity ratios and volumetric changes for the quantity of water actually used.
- Developed a residential rates study for Whitemarsh Township Authority that evaluated the cost/benefits of converting a fixed-rate EDU tariff to a volumetric tariff. Developed recommendations for new rates for the ensuing five-years.
- Developed an initial tariff study for Branchville Borough. The Borough had constructed a new community sanitary sewer system to replace hundreds of on-lot disposal systems and small, individual wastewater treatment systems located throughout the Borough. Using engineer's estimates of operating costs, developed a total revenue requirement, and allocated that revenue requirement to three classes of customer service. Developed an initial rate structure designed to recover the projected full revenue requirement.
- Prepared a cost of service allocation study for Southeast Morris County Municipal Utilities Authority, a regional water system that serves a suburban retail service population and several wholesale water customers. Allocated costs based on standard methodologies to various classes of residential, commercial industrial, and wholesale service. Developed a plan to move each service class to full-cost pricing over time.
- Developed a five-year comprehensive business plan for Passaic Valley Water Commission. This plan moved the Commission from an annual operating budget to a five-year budget that links operating costs, capital construction and debt service requirements to customer growth and revenue requirements and rates. The plan was instrumental in obtaining an improved bond rating and positioning the Commission to undertake a major capital improvement program.
- Developed a five-year comprehensive business plan for the North Wales Water Authority. This plan established a rolling five-year operating and capital budget that links operating costs, capital construction, and debt service requirements to customer growth and revenue requirements and rates. The plan was instrumental in maintaining current rates while also maintaining the Authority's AA bond rating.
- Served as an expert witness in an arbitration involving a dispute between a New Jersey municipal water department and A.C. Schultes, Inc., a well contractor. Assisted A.C. Schultes in supporting its claim for a contract modification and the recovery of unanticipated expenses. The arbitrator awarded the contractor 100% of its cost claim.
- Served as an expert witness in a matter involving the alleged contamination of a New Jersey municipal water system with heavy metals and organic chemicals. Reviewed over 38,000 discrete water quality sample results, analyzed the operational records of the system, and developed a computer model (EPANET2) depicting water flow and

ACCOMPLISHMENTS (CONTINUED)

water quality changes over a period spanning two decades. Assisted the client in successfully defeating a threatened class action lawsuit at the certification level.

- Served as an expert witness in a matter involving the alleged contamination of nearly 600 private wells in an area near Fairbanks, Alaska. Evaluated alternatives for the provision of alternate water supplies including the extension of an investor-owned water system, a publicly-owned water system, and a variety of on-site treatment and supply options. Assisted in the defense of the former owner of the site where the contamination was later alleged to have originated.
- Served as a mediator involving a dispute between the Long Beach Township Water Department and Don Siegel Construction Co., Inc., a pipeline installation contractor. Assisted the parties in resolving various construction cost claims and in interpreting the contract construction documents. Litigation over the disputes was avoided.
- Assisted a regional developer in obtaining wastewater planning approval for a project in an area determined to be in an “overload” condition by Pennsylvania DEP. This effort required the facilitation of negotiations between regional wastewater entities for wastewater conveyance and treatment services, expert consulting with a municipality and PA DEP concerning the municipality’s update to its Act 537 facilities plan, and coordination with other engineering consultants to secure final permit approvals.
- Developed a review of alternatives for the renovation or replacement of the Ridge Road Reservoir for Perkasio Regional Authority. Analyzed alternatives for reconstructing or replacing an in-ground water distribution reservoir. Developed a scope of services for a site geotechnical evaluation and assessed the potential cost of various renewal strategies.
- Reviewed engineering plans and operational practices in numerous water and wastewater rate adjustment proceedings and quality of service proceedings for the New Jersey Division of Rate Counsel. Assessed utility engineering design and construction plans, developed alternatives to utility proposed projects, and evaluated the utility companies' ability to render safe, adequate, and proper water or wastewater service. Provides expert testimony in the following utility rate, franchise expansion and service quality proceedings:
 - Acacia Lumberton Manor Fire Service Complaint BPU
Docket No. WC01080495
 - Andover Utility Company
BPU Docket WR17070726
 - Applied Waste Water Management Rates
BPU Docket No. WR03030222
 - Applied Waste Water Management Base Rates
BPU Docket No. WR08080550
 - Applied Waste Water Management Franchise

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WE03070530
- Applied Waste Water Management Andover Franchise
BPU Docket No. WE04111466
- Applied Waste Water Management Hillsborough Franchise
BPU Docket No. WE04101349
- Applied Waste Water Management Oakland Franchise
BPU Docket No. WE04111467
- Applied Waste Water Management Union Twp Franchise
BPU Docket No. WE050414
- Applied Waste Water Management Tewksbury Franchise
BPU Docket No. WR08100908
- Aqua NJ Freehold Franchise Extension Review
BPU Docket WE09120965
- Aqua NJ Pine Hill Franchise
BPU Docket No. WE05070581
- Aqua NJ Upper Freehold Franchise
BPU Docket No. WE05100822
- Aqua NJ Readington Wastewater Franchise
BPU Docket No. WE07030224
- Aqua New Jersey Base Rate Case
BPU Docket No. WR07120955
- Aqua New Jersey Acquisition of Bloomsbury Water
BPU Docket WE09050360
- Aqua New Jersey Acquisition of Harkers Hollow Water
BPU Docket WM09020119
- Aqua New Jersey Base Rate Adjustment
BPU Docket No. WR09121005
- Aqua New Jersey Base Rate Adjustment
BPU Docket No. WR11120859
- Aqua New Jersey Base Rate Adjustment
BPU Docket WR14010019
- Aqua New Jersey Base Rate Adjustment
BPU Docket WR18121351
- Aqua New Jersey DSIC Foundational Filing
BPU Docket No. WR12070685
- Aqua New Jersey Byram Franchise & Acquisition
BPU Docket No. WE15080957
- Aqua New Jersey Cliffside Park Acquisition
BPU Docket No. WE16040307
- Aqua New Jersey Acquisition of Oakwood Village
BPU Docket WM16080739
- Aqua New Jersey Base Rate Adjustments

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WR16010089
- Aqua NJ Distribution System Improvement Charge
Foundational Filing
BPU Docket No. WR16010090
- Atlantic City Sewerage Company Base Rate Adjustment
BPU Docket No. WR09110940
- Atlantic City Sewerage Company Base Rate Adjustment
BPU Docket WR11040247
- Atlantic City Sewerage Company Base Rate Adjustment
BPU Docket WR14101263
- Bayonne MUA – United Water NJ/ Kohlberg, Kravis, Roberts Joint
Venture Operations & Financing Agreement
BPU Docket No. WM12080777
- Bayview Water Company Rates
BPU Docket No. WR01120818
- Camden and United Water Environmental Services, Inc.
Management Services Agreement Modifications
BPU Docket No. WM12050457
- Borough of Haledon Rates
BPU Docket No. WR01080532
- City of Orange Privatization Review
BPU Docket No. WO03080614
- Crestwood Village Loan Approval
BPU Docket No. WF04091042
- Crestwood Village Water Co Base Rates
BPU Docket No. WR07090706
- Elizabethtown Water Co. v. Clinton Board of Adjustment BPU
Docket No. WE02050289
- Elizabethtown Water Company Rates
BPU Docket No. WR03070510
- Elizabethtown Water Company Franklin Franchise
BPU Docket No. WE05020125
- Elizabethtown Water Company Purchased Water Adjustment Clause
BPU Docket No. WR04070683
- Environmental Disposal Corporation Main Extension Agreement
BPU Docket No. WO04091030
- Environmental Disposal Corporation Rates
BPU Docket No. WR04080760
- Environmental Disposal Corporation Rates
BPU Docket No. WR07090715
- Environmental Disposal Corporation Change in Control
BPU Docket No. WM15040492

ACCOMPLISHMENTS (CONTINUED)

- Fayson Lake Water Company Rates
BPU Docket No. WR03040278
- Fayson Lake Water Company Base Rates
BPU Docket No. WR07010027
- Fayson Lake Water Company Base Rates
BPU Docket WR14050405
- Fayson Lake Water Company Base Rates
BPU Docket WR17101041
- Gordon's Corner Water Company Rates
BPU Docket No. WR03090714
- Gordons Corner Water Co Base Rate Adjustment
BPU Docket No. WR10060430
- Gordons Corner Water Co Base Rate Adjustment
BPU Docket No. WR12090807
- Gordons Corner Water Co Base Rate Adjustment
BPU Docket WR14040325
- Gordons Corner Water Co Base Rate Adjustment
BPU Docket WR18030268
- Jensens Deep Run Franchise Transfer
BPU Docket No. WE10070453
- Lake Valley Water Company Rates
BPU Docket No. WR04070722
- Mahwah Tank Maintenance Privatization
BPU Docket No. WO15050548
- Middlesex Water Company Rates
BPU Docket No. WR03110900
- Middlesex Water Company Rates
BPU Docket No. WR05050451
- Middlesex Water Company Base Rates
BPU Docket No. WR07040275
- Middlesex Water Co Transmission Main Prudency Review
BPU Docket No. WO08020098
- Middlesex Water Company Base Rates
BPU Docket No. WR09080666
- Middlesex Water Company DSIC Foundational Filing
BPU Docket No. WR12111021
- Middlesex Water Company Base Rates
BPU Docket No. WR12010027
- Middlesex Water Co DSIC Foundational Filing
BPU Docket No. WR14050508
- Middlesex Water Company Base Rate Adjustment
BPU Docket No. WR15030391

ACCOMPLISHMENTS (CONTINUED)

- Middlesex Water Company Base Rate Adjustment
BPU Docket No. WR17101049
- Montague Water Company Rates
BPU Docket No. WR03121034
- Montague Sewer Company Rates
BPU Docket No. WR03121035
- Montague Sewer Company Rates
BPU Docket No. WR05121056
- Montague Water Company Acquisition
BPU Docket No. WM10060432
- Montague Water & Sewer Company Rates
BPU Docket No. WR12110983
- Mount Holly Water Company Rates
BPU Docket No. WR03070509
- Mount Olive Villages Water & Sewer Franchise
BPU Docket No. WE03120970
- Mount Olive Villages Sewer Base Rate Adjustment
BPU Docket No. WR16050391
- Mount Olive Villages Water Base Rate Adjustment
BPU Docket No. WR16050390
- New Jersey American Water Company Rates
BPU Docket No. WR03070511
- New Jersey American Water Company Rates
BPU Docket No. WR06030257
- New Jersey American Water Acquisition of Mt. Ephraim
and Approval of Municipal Consent
BPU Docket No. WE06060431
- New Jersey American Water Purchased Water Adjustment Clause
BPU Docket No. WR05110976
- New Jersey American Water Company – Mantua Franchise
BPU Docket No. WE07060372
- New Jersey American Water Co – Rocky Hill Franchise
BPU Docket No. WE07020103
- New Jersey American Water Company Rates
BPU Docket No. WR08010020
- New Jersey American Hopewell Township Franchise
BPU Docket No. WE07120981
- New Jersey American Water Co/City of Trenton
Joint Petition for Approval of the Sale of Water System
BPU Docket No. WE08010063
- New Jersey American Water Company Petition for Approval of a
Distribution System Improvement Charge (DSIC)

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WO08050358
- New Jersey American Water Co Management Audit
BPU Docket No. WA09070510
- New Jersey American Water Base Rate Adjustment
BPU Docket No. WR10040260
- New Jersey American Water Company Franklin Franchise Review
BPU Docket No. WE11070403
- New Jersey American Water Company Base Rate Adjustment
BPU Docket No. WR11070460
- New Jersey American Water Company Base Rate Adjustment
BPU Docket No. WR15010035
- New Jersey American Water Company DSIC Foundational Filing
BPU Docket No. WR15060724
- New Jersey American Water – Eastampton Franchise Review
BPU Docket No. WE17020139
- New Jersey American Water – Shorelands Water Co. Acquisition
BPU Docket No. WM16101036
- New Jersey American Water Co Howell Franchise Review
BPU Docket No. WE17111148
- New Jersey American Water Base Rate Adjustment
BPU Docket No. WR17090985
- New Jersey American Water Acquisition of Mt. Ephraim Sewer
BPU Docket WM19010117
- New Jersey Natural Gas Rates
BPU Docket No. GR07110889
- Oakwood Village Sewer Change in Control
BPU Docket No. WM07070535
- Oakwood Village Sewer System Change in Control
BPU Docket No. WM15091006
- Parkway Water Company Rates
BPU Docket No. WR05070634
- Pinelands Water Company Rates
BPU Docket No. WR03121016
- Pinelands Wastewater Company Rates
BPU Docket No. WR03121017
- Pinelands Water Company Rates
BPU Docket No. WR08040282
- Pinelands Wastewater Company Rates
BPU Docket No. WR08040283
- Pinelands Water Company Rates
BPU Docket No. WR120807342
- Pinelands Wastewater Company Rates

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WR12080735
- Pinelands Water Company Rates
BPU Docket No. WR15101200
- Pinelands Wastewater Company Rates
BPU Docket No. WR15101202
- Pinelands Water Company Rates
BPU Docket No. WR19030417
- Pinelands Wastewater Company Rates
BPU Docket No. WR19030418
- Rahway Operational Services Agreement Review
BPU Docket No. WO16070678
- Rock GW, LLC Determination of Applicability of Board Regulation
BPU Docket No. WO08030188
- Rock GW, LLC Determination of Applicability of Board Regulation
BPU Docket No. WO10100739
- Roxbury Water Company Rates
BPU Docket No. WR09010090
- Roxciticus Water Company Change in Control
BPU Docket No. WM15080982
- SB Water & Sewer Company Acquisition
BPU Docket No. WM16030197
- Seabrook Water Company Franchise
BPU Docket No. WC02060340
- Seaview Harbor Water Company Change in Control
BPU Docket No. WM13100957
- Shorelands Water Company Rates
BPU Docket No. WR04040295
- Shorelands Water Company Base Rates
BPU Docket No. WR10060394
- Shore Water Company Rates
BPU Docket No. WR09070575
- South Jersey Water Supply Change in Control
BPU Docket No. WM07020076
- Suez Arlington Hills Wastewater Rates
BPU Docket No. WR16060510
- Suez Water NJ DSIC Foundational Filing
BPU Docket No. WR13030210
- Suez Water NJ Borstad Water Company Acquisition
BPU Docket No. WE15111247
- Suez Water New Jersey Base Rate Adjustment
BPU Docket No. WR15101177
- Suez Water Toms River Base Rate Adjustments

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WR15020269
- Suez Water Toms River DSIC Foundational Filing
BPU Docket WR13111128
- Suez Water NJ – USG Cottonwood Agreement
BPU Docket No. WR15070856
- Suez Water NJ Electrical Efficiency Contract Eval.
BPU Docket No. WO17050494
- Suez Water Princeton Meadows Deferred Accounting
BPU Docket WF17030186
- SUEZ Water NJ Acquisition of West Milford MUA
BPU Docket WM17111189
- SUEZ Water NJ Base Rate Adjustment
BPU Docket WR18050593
- SUEZ Water NJ Acquisition of Independence MUA
BPU Docket WM18010008
- SUEZ Water NJ Acquisition of West Milford MUA
BPU Docket WM17111189
- SUEZ Water NJ Acquisition of East Brookwood
BPU Docket WM18040449
- United Water Acquisitions Evaluation
BPU Docket No. WM02060354
- United Water Arlington Hills Franchise
BPU Docket No. WE07020084
- United Water Arlington Hills Sewerage Base Rates
BPU Docket No. WR08100929
- United Water New Jersey Base Rates
BPU Docket No. WR07020135
- United Water New Jersey Base Rates
BPU Docket No. WR08090710
- United Water New Jersey Base Rates
BPU Docket No. WR11070428
- United Water New Jersey DSIC Foundational Filing
BPU Docket No. WR12080724
- United Water New Jersey Management Audit
BPU Docket: WA05060550
- United Water New Jersey Affiliate Transaction Review – JPI Painting
BPU Docket No. WO10060410
- United Water New Jersey Affiliate Transaction
Review – Utility Service Contract
BPU Docket No. WO10060409
- United Water New Jersey Mt Arlington Franchise Extension Review
BPU Docket No. WE09121006

ACCOMPLISHMENTS (CONTINUED)

- United Water New Jersey Vernon Township Franchise Extension Review
BPU Docket WE10110870
 - United Water New Jersey Vernon Township Franchise Extension Review
BPU Docket WE11030155
 - United Water Great Gorge/Vernon Sewer Base Rates
BPU Docket No. WR10100785
 - United Water Toms River Base Rates
BPU Docket No. WR080830139
 - United Water Toms River Base Rates
BPU Docket No. WR12090830
 - United Water West Milford Sewerage Base Rates
BPU Docket No. WR08100928
 - Village Utility Inc Franchise and Initial Tariff
BPU Docket 180808926
- Assisted the New Jersey Division of Rate Counsel in assessing drought conditions effecting water utilities in New Jersey during the 2002 drought. Analyzed proposals for water supply interconnections to mitigate drought impacts, developed position statements regarding pricing alternatives, and provided a critique of State water supply management initiatives prior to and during drought conditions.
 - Assisted the New Jersey Division of Rate Counsel in assessing the need for a Distribution System Improvement Charge (DSIC) to allow regulated water utilities to accelerate the recovery of capital investments in water distribution assets (BPU Docket WO10090655). Provided financial analyses of current and prospective distribution renovation programs. Reviewed and commented on draft language for a generic rule making.
 - Assisted the Delaware Public Advocate in assessing drought conditions effecting water utilities in northern New Castle County during the 2002 drought (PSC Docket No. 323-02). Reviewed water utility operations prior to and during the drought emergency, assessed the effectiveness of use curtailments, and developed recommendations to assure proper, cost-effective resource management for future drought conditions.
 - Assisted the Delaware Public Service Commission in a determination of rate base for Artesian Water Company in PSC Docket 08-96. Evaluated selected plant facilities and proposed projects to determine the need to impute revenues for under-utilized facilities in establishing new base rates.
 - Assisted the Delaware Public Service Commission in an evaluation of the Initial Tariff filing submitted by Tidewater Environmental Services, Inc. (PSC Docket No. 11-274WW) for wastewater service in a development known as "The Ridings." Evaluated projected operating expenses and rate base claims and developed recommendations that avoided a potential 17.5% rate increase.

ACCOMPLISHMENTS (CONTINUED)

- Prepared an assessment of the water supply capacity certification and water conservation plan submitted by United Water Delaware in PSC Docket 09-282 on behalf of the Delaware Public Service Commission. Evaluated the capacity of the sources of supply available to the Company with respect to projected demands and the requirements of the Delaware Water Supply Self-Sufficiency Act of 2003. Assessed the effectiveness of water conservation activities and developed recommendations to improve the efficiency and effectiveness of Company conservation programs.
- Provided expert testimony on behalf of the Delaware Public Advocate in the matter of Inland Bays Preservation Company's request for an increase in wastewater rates before the Delaware Public Service Commission (PSC Docket No. 09-327-WW). Evaluated plant facilities, proposed projects, and the allocation of developer contributions in aid of construction to determine rate base. Assessed the level of operating expenses claimed in the filing and recommended adjustments to substantially lower the requested rate increase.
- Provided expert testimony on behalf of the Delaware Public Advocate in the matter of Tidewater Environmental Services, Inc.'s request for a base rate adjustment for seven of its regulated wastewater utility systems (PSC Docket No. 11-329WW). Established independent revenue requirements for each system to assure that costs and rates were properly matched for each independent group of customers served by the Company. Recommended an overall rate adjustment that was equivalent to 60% of the initial rate request and was within 12% of the final Ordered rates.
- Provided expert testimony on behalf of the Delaware Public Advocate in the matter of Tidewater Utilities, Inc.'s request for a base rate adjustment for its regulated water systems throughout Delaware (PSC Docket 13-466). Provided testimony on engineering and accounting issues related to the determination of the Company's revenue requirement that resulted in a rate settlement equivalent to twenty percent of the Company's filed rate request.
- Prepared a tariff design evaluation for the Pequannock River Basin Regional Sewer Authority to assess alternative rate structures for service to regional participating municipalities. Evaluated current budgeting and billing systems and alternatives to equitably allocate regional system costs to the participating municipalities.
- Provided expert testimony on behalf of the Village of Ridgewood Water Utility in a dispute regarding the regional allocation of costs to retail customers serviced beyond the corporate boundaries of the Village. Reviewed historical budgets and actual financial results, developed revised and updated cost allocations for shared services, and provided recommendations on retail rates charged within and outside of the Village.
- Provided expert advice to the Borough of Ridgely regarding the failure of a 36-inch diameter PCCP water main owned by an investor-owned utility. Assisted the Borough in negotiating a suitable restoration and replacement plan and in negotiations for the recovery of damages resulting from the break.

ACCOMPLISHMENTS (CONTINUED)

- Provided expert testimony on behalf of the Township of Newtown before the Pennsylvania Public Utility Commission (PUC Docket No. P-2012-2327738) in regard to a dispute between the Township and Newtown Artesian Water Company regarding the siting of a proposed new well. Evaluated current and future water supply needs, water quality and treatment needs, and the revenue requirement of the proposed project relative to other alternatives.
- Managed 175 municipal and commercial water and wastewater contracts located in seven states for American Water Services/AmericanAnglian Environmental Technologies. Through these contracts, cost effective water and wastewater service was provided to over one million people. Contracts included the 160 MGD City of Buffalo, NY water system and the 30 MGD Scranton Sewer Authority wastewater operations. Directed an operations staff of 700 employees. Eliminated financial losses while improving safety and quality.
- Directed a marketing and business development staff for AmericanAnglian Environmental Technologies that secured the largest operations and maintenance contract awarded in the US in 1999 and the second-best overall performance in the US market. Increased revenues by 28%. Evaluated potential contract operations and design/build projects to identify operating and capital savings on hundreds of potential contracts throughout the United States. Evaluations included Atlanta, Georgia; Scranton, Pennsylvania; and Springfield, Massachusetts.
- Managed the operations of 16 water systems for New Jersey-American Water Company, a regulated investor-owned utility serving one million people throughout NJ. Coordinated the activities of a decentralized operations staff of 440 to provide reliable water service, ensure environmental compliance, control costs, manage and maintain system assets, reduce liability, provide site security and maintain a safe work place, and meet financial objectives. Responsible for the maintenance and operation of all source of supply, treatment, filtration, and storage facilities, producing and distributing between 100 MGD and 220 MGD, as well as over 4,000 miles of water transmission and distribution facilities.
- Directed a team of engineering, legal, public relations and financial professionals that planned, designed, permitted, and constructed a \$192,000,000 water treatment plant and pipeline system for New Jersey-American Water Company. The intake, constructed in environmentally sensitive areas, and the state-of-the-art water filtration plant can be expanded to produce 100 MGD. The project is the principal source of surface water for nearly one million people in southern New Jersey and it was built to allow new regulatory controls on ground water use to go into effect. The project was completed within budget and on schedule.
- Developed the financial model and contract language that allowed water lines to be extended to over 3,000 homes with contaminated private wells in Atlantic County, New Jersey. This program provided the financial assurances needed to construct several miles of water mains, eliminate federal tax liability, and reduce costs by 34%.

ACCOMPLISHMENTS (CONTINUED)

- Initiated and directed the first study of desalination for public water supply purposes in NJ for the City of Cape May. This project evaluated two desalination technologies and demonstrated that reverse osmosis could be used effectively to treat brackish water at a competitive cost. A full-scale plant has since been placed in service.
- Developed long-range regional water supply plan for Monmouth County, New Jersey, a county that was adding as many as 1,000 water utility customers per year and seriously stressing the water supply. The plan evaluated alternative sources of water, conservation, and regional reservoir development. The recommendations avoided \$30,000,000 in capital construction while ensuring a safe supply of water for a 15-year planning period. Negotiated supply sharing operating agreements with the New Jersey Water Supply Authority to implement the plan.
- Directed a staff of engineers and consultants in preparing comprehensive plans for 60 water systems located throughout the United States. Communities served by these systems include Pittsburgh, Pennsylvania and its surrounding suburbs; Charleston, West Virginia; Richmond, Indiana; E. Saint Louis, Illinois; and Monterey, California. Evaluated alternatives and identified the least costly means of providing safe water service for each system. Assessed operations strategies to identify external threats to the reliability and efficiency of these systems. Identified specific capital facility needs and operations strategies for five, ten and fifteen-year planning horizons, defined the long-term role of each system in prompting regional water supply development, and assessed the impact of future State and Federal water quality regulations on system operations and needs.
- Developed a formula for allocating ground water to 30 water suppliers in southern New Jersey for the New Jersey Department of Environmental Protection and negotiated an implementation agreement with effected suppliers. The New Jersey Legislature adopted the formula in the Water Supply Management Act Amendments of 1992. The allocation formula protects a regional aquifer from over-pumping.
- Developed a plan to convey storm water through a sixty-foot high railroad embankment in Prince Georges County, Maryland. Evaluated alternative methods and selected one that allowed an existing culvert to be modified to carry higher flow rates. Saved over \$500,000 in construction costs. The Washington Suburban Sanitary Commission and Prince Georges County adopted the design as a standard in their storm water design manual.
- Negotiated Lakewood, New Jersey's first three-year water and wastewater labor agreement in the face of an impending strike, departing from prior history of year-to-year contract agreements.
- Provided expert testimony in judicial proceedings involving utility rate adjustments before the New Jersey Board of Public Utilities, the Connecticut Department of Public Utility Control and the New York Public Service Commission. Testified on environmental and operations topics including rate setting strategies, source of supply improvements, water resources management, treatment to mitigate contamination,

ACCOMPLISHMENTS (CONTINUED)

staffing levels and operating practices. Testified as to the least costly means of operating and maintaining water and wastewater facilities.

- Served as a gubernatorial appointee to the New Jersey Water Supply Advisory Council under Governors Florio and Whitman. Advised the NJ Department of Environmental Protection on a variety of water resources management issues.
- Coordinated the response to an outbreak of giardiasis for the US Environmental Protection Agency. The outbreak affected 20% of the people served by a municipal water system in north-central Pennsylvania. Specified immediate control measures, short-term treatment techniques, and long-term treatment improvements to resolve the immediate problem and prevent a recurrence.

AWARDS

John J. Gallen Memorial Award presented by the Villanova University College of Engineering (1988) in recognition of many significant achievements in the field of water supply and distribution, effective leadership in developing regional water supply systems and contributions in the development of comprehensive plans for water supply systems.

George Warren Fuller Award presented by the American Water Works Association (2013) for distinguished service to the water supply field in commemoration of the sound engineering skill, brilliant diplomatic talent and constructive leadership which characterized the life of George Warren Fuller.

REPRESENTATIVE CLIENTS

- A.C. Schultes, Inc.
- Aquarion Water Company of Connecticut
- Aquarion Water Company of Massachusetts
- Atlantic City Municipal Utilities Authority
- Bethlehem Water Authority
- BOC Gases
- Bucks County Water & Sewer Authority
- Camco Management
- Cedar Grove Township
- Consumers New Jersey Water Company
- Delaware Public Advocate
- Delaware Public Service Commission
- D. R. Horton – New Jersey
- Elmira Water Board
- Erie City Water Authority
- Greater Ouachita Water Company

ACCOMPLISHMENTS (CONTINUED)

- Harris Defense Group
- Jersey City Municipal Utilities Authority
- Lower Makefield Township
- New Jersey-American Water Company
- New Jersey Division of Rate Counsel
- New Jersey Water Supply Authority
- New York City Department of Environmental Protection
- North Penn Water Authority
- North Wales Water Authority
- Passaic Valley Water Commission
- Pequannock River Basin Regional Sewerage Authority
- Perkasio Borough
- Perkasio Borough Authority
- Pricewaterhouse Coopers, LLP
- Southeast Morris County Municipal Utilities Authority
- Sussex Shores Water Company
- Township of Sparta (NJ)
- U.S. Water, LLC
- Upper Dublin Township
- Village of Ridgewood (NJ)
- Williams Alaska Resource

PROFESSIONAL QUALIFICATIONS

Registered Professional Engineer in Delaware (2004), Maryland (1982), New Jersey (1984), New Mexico (1987), New York (1984) and Pennsylvania (1983).

Licensed to complete RAM-WSM vulnerability assessments (2002).

PROFESSIONAL ASSOCIATIONS

American Society of Civil Engineers, American Water Works Association (Trustee of New Jersey Section), American Water Resource Management Association, International Water Association, National Ground Water Association, National Fire Protection Association, Water Environment Federation, Tau Beta Pi.

PROFESSIONAL HISTORY

HOWARD J. WOODS, JR. & ASSOCIATES, LLC	2000 - Present
General Manager	
AMERICAN WATER WORKS COMPANY	1983 - 2000
American Water Services, Inc.	
Senior Vice President - Operations	1999 - 2000
American Anglian Environmental Tech., L.P.	
Senior Vice President - Business Development	1998 - 1999

ACCOMPLISHMENTS (CONTINUED)

American Water Works Service Co. Vice President - Special Projects	1997 - 1998
New Jersey-American Water Co., Inc. Vice President - Operations	1989 - 1997
American Water Works Service Co. Engineering Manager	1988 - 1989
System Director of Planning	1986 - 1988
Division Manager of Operations	1984 - 1986
Division Director of Engineering	1983 - 1984
JOHNSON, MIRMIRAN & THOMPSON Project Engineer	1981 - 1983
U.S. ENVIRONMENTAL PROTECTION AGENCY Environmental Engineer	1977 - 1981

CONTACT INFORMATION

Howard J. Woods, Jr., P.E.
Howard J. Woods, Jr. & Associates, L.L.C.
49 Overhill Road, East Brunswick, NJ 08816-4211
Phone: 267-254-5667
E-mail: howard@howardwoods.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017951 (water)
	:		C-2020-3019348
v.	:		C-2020-3019305
	:		
Pittsburgh Water and Sewer Authority - Water	:		
	:		
Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017970 (wastewater)
	:		C-2020-3019349
v.	:		C-2020-3019302
	:		
Pittsburgh Water and Sewer Authority - Wastewater	:		
	:		
Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to Authorize the Pay-As-You-Go Method of Financing	:	Docket Nos.	P-2020-3019019
	:		
	:		
	:		
	:		
	:		

**DIRECT TESTIMONY
OF DANIEL GILMAN,
CHIEF OF STAFF TO MAYOR WILLIAM PEDUTO
ON BEHALF OF THE CITY OF PITTSBURGH**

1 **Q. Please state your name and current employment.**

2 A. I am Daniel Gilman, Chief of Staff to the Honorable Bill Peduto, Mayor of the City of
3 Pittsburgh (City).

4
5 **Q. Please describe your educational background and work experience.**

6 A. I am a 2004 graduate of Carnegie Mellon University, where my major was Ethics, History
7 & Public Policy. I have been involved in Pittsburgh city government since, first as a staffer
8 for then-Councilman Peduto who represented Pittsburgh's District 8 (Oakland, Point
9 Breeze, Shadyside, and Squirrel Hill), then as his chief of staff until he was elected Mayor
10 in 2013. In that same municipal election, I was elected to fill Councilman Peduto's vacated
11 City Council seat. I was reelected in 2017, but resigned, effective January 3, 2018, to accept
12 my present position as Mayor Peduto's Chief of Staff.

13
14 **Q. Please describe your responsibilities as the Mayor's Chief of Staff.**

15 A. I work with the Mayor to implement his vision for the City, which means I have
16 responsibility for the oversight of the leadership and operations of all City departments and
17 responsibility for major projects and policy initiatives that the City undertakes or that affect
18 the City. For example, during 2019, a major issue for the City was the renegotiation of the
19 City's 1995 Cooperation Agreement with the Pittsburgh Water and Sewer Authority
20 (PWSA) that the 2017 amendments to the Public Utility Code necessitated that gave the
21 Pennsylvania Public Utility Commission (PUC) jurisdiction over PWSA's rates and
22 service. On behalf of the City, I negotiated the 2019 Cooperation Agreement with PWSA
23 representatives. At this writing, I spend most of my time managing the City's efforts to

1 deal with the COVID-19 pandemic.

2

3 **Q. Why did the City renegotiate the 1995 Cooperation Agreement?**

4 A. The City and PWSA understood that PUC jurisdiction and new regulatory responsibilities
5 affected aspects of the 1995 Capital Lease Agreement and the 1995 Cooperation
6 Agreement. Therefore, they had to revisit these agreements because of the new regulatory
7 responsibilities. For example, the 2019 Cooperation Agreement recognizes PWSA, an
8 independent municipal authority, is transitioning from a municipal authority that was not
9 subject to the PUC's authority and oversight to a municipal authority that is subject to the
10 PUC's authority and oversight, assuming an identity that is more akin to a traditional public
11 utility rather than an independent authority. On the other hand, the City, the owner of the
12 water and sewer system, is transitioning from its ownership position—allowing it
13 unfettered access to *its* water and sewer system—to become a customer, paying a public
14 utility for its access to water and sewer services.

15

16 **Q. Why was renegotiation of the 1995 Cooperation Agreement a major issue for the**
17 **City?**

18 A. The City and PWSA negotiated the 2019 Cooperation Agreement, in part, to balance the
19 significant change, understanding each party must take specific positions: one to protect its
20 customers and the other to protect its residents. As the majority of PWSA's customers are
21 City taxpayers, they will eventually bear the economic burden in one form or another (i.e.,
22 higher rates or higher taxes). For the City, it had to consider the fiscal consequences of the
23 new arrangement because it would have a direct impact on the City's operating budget.

1 The City is not a private business. It cannot simply shift its resources to the cost and
2 expense of water and sewer services. The City had to consider its overall budget, providing
3 all necessary services to protect the general health and welfare of our residents, particularly
4 those who have low income or who are otherwise underserved and therefore, rely upon the
5 City to provide these necessities. It had to add the additional cost of water and sewer
6 services into its budget in a manner that would not jeopardize the other necessary services,
7 including the employment of City workers to provide those services. The 2019
8 Cooperation Agreement recognized the transitions in the relationship, allowing each party
9 the opportunity to implement these significant changes in a reasonable period of time to
10 benefit the taxpayers and ratepayers, respectively, recognizing the budgetary impact to both
11 PWSA and the City, respectively.

12
13 **Q. Please provide an overview of the general goals of the renegotiation.**

14 **A.** We start from the premise that the 1995 Cooperation Agreement and the 1995 Capital
15 Lease Agreement must be read together. The City and PWSA have always viewed these
16 Agreements as part of a unified, single package. These Agreements memorialize
17 negotiated commitments between the City and PWSA. The City wanted to accomplish the
18 2019 transition in a manner that, where possible, is as consistent as possible with the 1995
19 Cooperation Agreement and the 1995 Capital Lease Agreement, which provide PWSA
20 with the option to purchase the water and sewer system in 2025. Overall, the City entered
21 the negotiation with the goal of protecting the public's best interest. The City—and
22 PWSA—wanted an agreement that would over time be fair to the residents/customers
23 residing within the City of Pittsburgh – the individuals who are PWSA ratepayers *and* City

1 taxpayers.

2 We, the City and PWSA, also wanted an agreement that would be fair to the City, the owner
3 who would pay for water and sewer service, and PWSA, the party assuming the duty, and
4 now, the mission to provide quality water service and sewer transmission service,
5 consistent with the public's best interest. For example, we wanted the new agreement to
6 confirm PWSA's current day-to-day control and its future ownership (circa 2025) of the
7 water and sewer transmission facilities and the services that support those facilities.

8 The City, and presumably PWSA, recognized that, pursuant to their current positions and
9 until such point in time where PWSA assumes full ownership of the water and sewer
10 system, it had to consider Pennsylvania law. For example, exposure to claims for injuries
11 and damages. The City and PWSA are municipal entities, political subdivisions, that
12 receive a certain grant of general immunity, subject to limited exceptions to that immunity.
13 One of these exceptions includes claims and suits arising from alleged dangerous
14 conditions of the facilities of sewer and water owned by a local agency and located within
15 its rights-of-way. Until such time that PWSA assumes full ownership of the water and
16 sewer transmission facilities, the City remains open to claims and lawsuits because neither
17 the City nor PWSA can expand or restrict the legislative grant of immunity or the
18 exceptions to the general grant of immunity in a manner that is inconsistent with the law.
19 Therefore, the City considered its exposure to liability and awards/damages as an element
20 of the overall discussion.

21 Further, we understood, considered, and included in the negotiation additional factors, such
22 as the up-front rental payment PWSA paid to the City; the annual allotment of water to the

1 City for its use, which is actually a use that benefits our taxpayers/PWSA's customers; and
2 compensation for services the City provides to/for PWSA for items, such as pension
3 benefits paid to certain PWSA employees, who transitioned to PWSA employment, and
4 street cleaning, which is performed by City employees with City equipment, saving PWSA
5 capital and budgetary expenses.

6
7 **Q. What is the purpose of your testimony in this proceeding?**

8 A. My testimony will give the City's perspective on the past and future relationship between
9 the City and PWSA, providing important context for the PUC's consideration of the 2019
10 Cooperation Agreement; an explanation for key provisions in the 2019 Cooperation
11 Agreement; and the facts concerning the disastrous consequences for the City and its
12 residents if the PUC modifies the terms of the 2019 Cooperation Agreement in a way that
13 disrupts the careful balance of interests and mutual benefits it achieves, not only with
14 respect to transitional provisions that mitigate rate shock by phasing in changes that require
15 the City to pay for services PWSA previously provided "free of charge" but are actually a
16 form of consideration under the 1995 Cooperation Agreement and Capital Lease
17 Agreement, but also with respect to the valuable services each provides the other. In short,
18 the negotiated agreement benefits all by the synergies it provides.

19
20 **Q. Have you reviewed the direct testimony of PWSA Chief Corporate Counsel and Chief
21 of Administration Debbie M. Lestitian, PWSA Statement No. 1 filed in this
22 proceeding on June 5, 2020?**

23 A. I have, and I am in general agreement with her comments. In particular, I agree with her

1 that the provisions of the 2019 Cooperation Agreement are just and reasonable given the
2 historical relationship between the City and PWSA and the fact that the City will continue
3 to own the assets it leases to PWSA until 2025, and that the Agreement is a “logical next
4 step toward a more traditional utility-customer relationship between PWSA and the City.”
5 PWSA Statement No. 1 at 11:19-20. The Agreement embodies gives and takes on both
6 sides that, as she says and I know well, are the “product of months of negotiations.”
7

8 *1. Relationship Between the City and PWSA*

9 **Q. Please briefly describe the historical relationship between the City and PWSA.**

10 A. The City has been responsible for providing water service to its residents for over two
11 centuries. Over the many years, before the City established PWSA in 1984, the City built
12 a system of pumping stations, reservoirs, pretreatment plants, filtration plants, and
13 distribution mains to provide water to City residents, to municipally owned buildings, and
14 City instrumentalities, such as the Pittsburgh Zoo. In the 1880s, the City began
15 constructing a municipal sewer system, which collected sewage throughout the City. After
16 World War II, Allegheny County established the Allegheny County Sanitary Authority
17 (ALCOSAN), which commenced county-wide sewage treatment in 1959.

18 In 1984, the City created PWSA, under the Municipality Authorities Act of 1945, primarily
19 to oversee a capital improvement program to refurbish the water system's infrastructure.
20 The City and PWSA entered into a 1984 Lease and Management Agreement in which the
21 City leased to PWSA the City's existing water and sewer systems, transferred financial
22 responsibility for operating and maintenance for the systems to PWSA, and established the
23 City as agent for PWSA to continue providing all services needed to operate the water and

1 sewer systems, with PWSA reimbursing the City for all expenses actually incurred and
2 expended by the City.

3 In 1995, the City and PWSA modified this arrangement, replacing the 1984 Lease and
4 Management Agreement with the 1995 Cooperation Agreement and the concurrent 1995
5 Capital Lease Agreement. Together, the 1995 agreements ended the agency relationship
6 in which City employees were responsible for day-to-day operations of the facilities and
7 transferred operational control of the water and sewer systems to PWSA. Most of the City
8 employees then responsible for day-to-day operations of the facilities became PWSA
9 employees. The 1995 agreements created an arrangement in which PWSA paid the City a
10 front-end loaded rental fee of \$96,017,249.60 for the 30 year lease of the water and sewer
11 systems; granted the City the right to receive up to 600,000,000 gallons of water each year
12 until 2035 to be used by the City, its departments, agencies, and instrumentalities (i.e.,
13 Pittsburgh Zoo, Phipps Conservatory, National Aviary in Pittsburgh, and Schenley Golf
14 Course); and allowed reimbursements for any remaining "actual direct expenses" the City
15 incurred on behalf of PWSA. In exchange, PWSA received possession of the water and
16 sewer systems and related facilities and the right to purchase the water and sewer systems
17 outright for \$1 on September 1, 2025, and the ability to utilize existing City infrastructure
18 and manpower to procure necessary services the City was already geared up to provide to
19 itself, such as specified engineering, communications, vehicle maintenance, legal,
20 information, and financial services, on a fee for services basis, so as to avoid PWSA's less
21 efficient procurement of those services either in-house or from third parties.

1 **Q. Can you identify and describe the documents marked as Exhibits DG-1 and DG-2?**

2 A. Yes. Exhibit DG-1 is the 1995 Cooperation Agreement. Exhibit DG-2 is the 1995 Capital
3 Lease Agreement.

4
5 **Q. Was the \$96 million dollar up-front rental fee charged in the 1995 Capital Lease
6 Agreement based on a valuation of the City's water and sewer facilities?**

7 A. To be clear, the total rental fee was approximately \$101.4 million, but PWSA took
8 advantage of discounts for prepayments, reducing the amount paid to about \$96 million.
9 To my knowledge, the payment, which effectively will operate as the purchase price given
10 the agreement's 2025 sale for \$1, was a negotiated price based more on the amount the
11 City needed to ease financial difficulties the City faced in 1995 than the actual value of the
12 water and sewer facilities transferred. Critics of the Capital Lease/Cooperation agreement
13 package at the time who favored privatization of the water and sewer systems maintained
14 that the transferred facilities were actually worth up to more than double the amount PWSA
15 actually paid. The Allegheny Institute for Public Policy, for example, authored a 1995
16 study that concluded "[b]ased on discount cash flow techniques used in free market
17 transactions" that the systems had an "intrinsic valuation of \$152.3 to \$211 million."¹ That
18 financial analysis squares with City witness Woods' observation, based on net book asset
19 value rather than cash flow, that in 1995 the book value less depreciation of the water and
20 sewer system assets was \$172,456,000. City of Pittsburgh's Statement No. 2 at 8:14-9:2.

21

¹ McDonald and Hagan, "A Financial Valuation of the Pittsburgh Water and Sewers System," Allegheny Institute Report #95-04 September 1995. https://www.alleghenyinstitute.org/wp-content/uploads/components/com_reports/uploads/95_04.pdf

1 **Q. What in your view is the significance of the fact that the rental payment under the**
2 **Capital Lease Agreement undervalued the assets leased to PWSA?**

3 A. It confirms what is obvious from a review of the 1995 Cooperation Agreement and the
4 1995 Capital Lease Agreement; they are part of the same transaction, which transitioned
5 the City's relationship with PWSA from one in which the City continued to perform the
6 actual operations of the water and sewer systems as agent for PWSA, to one in which
7 PWSA itself operated the systems and would own them outright after expiration of the
8 Capital Lease Agreement in 2025. Consideration to the City for that transfer of assets came
9 in the form of both the rental payment in the Capital Lease Agreement and the obligations
10 to the City PWSA undertook in the 1995 Cooperation Agreement, including the
11 commitment to provide the City with up to 600,000,000 gallons of water annually free of
12 charge for the City's use.

13
14 **Q. Are there other indicators that the two 1995 agreements must be read together?**

15 A. Yes. For example, when then-Mayor Murphy proposed to Pittsburgh City Council in April
16 1995 to make PWSA "a fully operating authority" by terminating the existing 1984 Lease
17 and Management Agreement between the City and PWSA, he did so in the form of two
18 simultaneously proposed resolutions, one to adopt the 1995 Cooperation Agreement and
19 the other to adopt the 1995 Capital Lease Agreement. The two agreements thus were
20 viewed as a package from their inception and have been described that way since, including
21 in PWSA's bond offering documents.²

² See, e.g., 2008 PWSA Bond Offering Official Statement at A-2 ("Concurrently with entering into the Capital Lease Agreement, the City and the Authority entered into a Cooperation Agreement...").
https://apps.pittsburghpa.gov/pwsa/2008_Final_OS_B_C_D-2.pdf

1 **Q. Given this history, what has been the City's perspective on PWSA's commitment in**
2 **the 1995 Cooperation Agreement to provide the City with up to 600,000,000 gallons**
3 **of water annually free of charge for the City's use through that Agreement's 40 year**
4 **term?**

5 A. The City's perspective has been that the no-charge water allotment was part of the
6 consideration for the 1995 lease and sale of assets, consistent with the reality that pre-
7 PWSA the City historically supplied its own water usage from the facilities it owned and
8 operated without rendering a bill to itself, and consistent with the fact that the City will
9 continue to own the PWSA assets through September 1, 2025. I would sum it up by saying
10 that the no-charge water allotment was an integral part of the 1995 deal and that without
11 the 1995 Cooperation Agreement there would have been no 1995 Capital Lease
12 Agreement.

13
14 **Q. Has the City changed its view concerning its entitlement to the water allotment?**

15 A. With the 2017 legislation subjecting PWSA to PUC regulation, and the lead remediation
16 and other infrastructure improvement challenges that the City on its own initiative
17 promoted to best position PWSA to meet successfully for the benefit of all Pittsburghers,
18 the City recognized that its relationship with PWSA would need to evolve, the 1995
19 Cooperation would need to be renegotiated, and the City would need to begin to pay a
20 reasonable rate for water usage at City-owned and affiliated properties and take other steps
21 to assure that the future relationship between the City and PWSA will be more arm's length
22 than in the past. I took that view with me into the negotiations with PWSA that culminated
23 in the 2019 Cooperation Agreement, and I believe the 2019 Cooperation Agreement as

1 executed fairly implements that result. On the issue of the water allotment, it implements
2 an end to free usage by the City, requires metering of all City properties, and immediately
3 imposes a payment obligation on the City, while mitigating the impact of the full expense
4 by phasing in responsibility over a 4 year period (20%/40%/60%/80%/100%) so that by
5 the fifth year, 2024, the City will pay 100% of the usage charges PWSA is permitted to
6 impose. We used a similar phase-in approach to other changes introduced in the 2019
7 Cooperation Agreement, to the benefit of both the City and PWSA, and, more important,
8 to Pittsburgh residents who are both taxpayers and ratepayers.

9
10 2. Key Provisions of the 2019 Cooperation Agreement

11 **Q. Please enumerate the key provisions in the 2019 Cooperation Agreement that you**
12 **negotiated with PWSA.**

13 A. My negotiations centered on Sections 3.1 and 3.2 (services to be provided between the City
14 and PWSA); 5.1 and 5.2 (water and sewer lines to and within City properties); 6.1 (subsidy
15 payments for City residents Pennsylvania American Water Company serves); 6.2 (water to
16 City and fire hydrant charges); 8 (City payroll tax) and 9 (PURTA tax); and 15 (relationship
17 between PWSA and the City). Most of the other provisions in the 2019 Cooperation
18 Agreement were carried over with minor modifications from the 1995 Cooperation
19 Agreement. The animating principle in all of these provisions was to create a sensible
20 division of cost and responsibility with respect to the provision of water and sewer service
21 to City residents that is fair to City taxpayers and fair to PWSA ratepayers based on the
22 history of the relationship, the existing sunk costs of each, and the respective capabilities
23 of the City and PWSA.

1 **Q. Of these, which are the most critical to the City?**

2 A. All are important, even the provisions that are objectively unfavorable to the City, because
3 the Agreement is the result of a careful balancing of interests that the City and PWSA each
4 brought to the negotiation, and the undoing of one upsets the balance among all that the
5 parties agreed to after long hours of negotiation. That said, the City is most interested in
6 preserving 6.2, which commits the City to paying 100% of the water and sewer charges
7 PWSA's PUC-approved tariffs levy on the City, but phases in that obligation over the
8 period 2020-2024 on the percentage basis I described. The City faces dire economic and
9 budgetary obstacles if the PUC rejects the Section 6.2 phase-in approach and requires the
10 City to pay those charges at the 100% level immediately.

11
12 **Q. Please address Sections 3.1 and 3.2 (services to be provided between the City and**
13 **PWSA).**

14 A. In these sections, the City and PWSA agreed to provide each other with services as needed
15 and requested based on "Actual Direct Expenses," defined in the Agreement to mean
16 identifiable and documented direct costs. For services the City may provide PWSA, PWSA
17 can benefit from the fact that, for example, the City already maintains and fuels a vehicle
18 fleet for a variety of purposes; there is no need for PWSA to go to the expense of
19 duplicating those support services for its vehicles. Of note is the provision in Section 3.1
20 that the City will provide the street sweeping services that both the City and PWSA need
21 to do, and bill PWSA for half the cost. The City already provides street sweeping as part
22 of its municipal services; PWSA is required to do it as part of its required stormwater
23 management environmental obligations. It makes practical and economic sense for both

1 parties that the City perform the function and split the cost 50/50 with PWSA.

2
3 **Q. Please address Sections 5.1 and 5.2 (water and sewer lines to and within City**
4 **properties).**

5 A. Section 5.2 recognizes that PWSA's commercial customers other than the City presently
6 are responsible for the operation, maintenance, repair, and replacement of the water and
7 sewer service laterals that serve their premises, whereas PWSA presently assumes that
8 obligation for City-owned properties and gradually transitions that expense to the City so
9 that by 2024 the City will be treated for this purpose like all other commercial customers.
10 The transition approach method here is similar to the 2020-2024 gradual phase-in approach
11 (20%/40%/60%/80%/100%) we agreed on for the city's obligation to pay for water usage,
12 but instead begins in 2021 and ends in 2025. The only exception to the City assuming
13 responsibility for service laterals to its own properties is with service laterals in City parks
14 larger than 50 acres, where the responsibility will remain with PWSA, including
15 responsibility for the installation of meters and meter vaults. In exchange, the City has
16 agreed in Section 5.2 to PWSA's practice for other customers to share 50% of the cost of
17 meter and meter vault installation, even though the PUC's regulations set the general
18 expectation that the utility, in this case PWSA, will bear such costs alone.

19
20 **Q. Please address Section 6.1 (subsidy payments for City residents Pennsylvania**
21 **American Water Company serves).**

22 A. Pennsylvania American Water Company (PAWC) serves certain sections of the City rather
23 than PWSA, and until recently, PAWC charged higher rates. The City, and then PWSA,

1 subsidized the difference so that all City residents were billed only the equivalent of
2 PWSA's lower rates. Section 6.1 addresses the City's agreement with PWSA as part of the
3 give and take negotiation of the 2019 Cooperation Agreement to assume responsibility for
4 that subsidy payment. As it happens, there no longer is a need for the subsidy because
5 PAWC's rates are no longer higher than PWSA's rates, so this provision is no longer
6 operative.

7
8 **Q. Please address Section 6.2 (water to City and fire hydrant charges).**

9 A. I have already alluded to the gist of, and the importance of, this section in previous
10 comments. For the City, this provision is the part of the 2019 Cooperation Agreement that
11 represents the biggest "give" by the City, because the no cost water allotment was integral
12 to the 1995 Capital Lease Agreement and Cooperation Agreement that transferred
13 possession and control of the City's water and sewer systems to PWSA. Retention of
14 Section 6.2 is critical to the City's economic well-being. It implements an end to the City's
15 free usage, requires metering of all City properties, and immediately imposes a payment
16 obligation on the City, while mitigating the impact of the full expense by phasing in
17 responsibility over a 4 year period (20%/40%/60%/80%/100%), so that by the fifth year,
18 2024, the City will pay 100% of the usage charges PWSA is permitted to impose. I note
19 that the City has agreed to this schedule and the obligation to pay for its usage at the 100%
20 level as of January 1, 2024, at a time when the City will still own the water and sewer
21 assets, and almost two years before PWSA can acquire them under the 1995 Agreements.
22 Inexplicably, the PUC has indicated in recent orders that it will reject this central provision
23 of the 2019 Cooperation Agreement and order the City's full payment for usage as of

1 October 3, 2019.³

2

3 **Q. If the PUC rejects Section 6.2 of the 2019 Cooperation Agreement what would be the**
4 **effect on the City?**

5 A. If the PUC rejects Section 6.2, as the PUC has indicated it intends to do, it would, in the
6 City's view, gut the 2019 Cooperation Agreement, upend the City's fiscal plans, and
7 expose the most vulnerable City residents to the brunt of unavoidable budget cuts, all at a
8 time when the City has recently emerged from Act 47 "financially distressed" status and
9 now is in the throes of dealing with the revenue shortfalls associated with the effects of the
10 COVID-19 pandemic. I will address these issues in more detail later in my testimony.

11

12 **Q. Please address Section 8 (City payroll tax) and Section 9 (PURTA tax).**

13 A. Throughout the negotiations between the City and PWSA, PWSA's mantra was that it
14 should be treated in the way the City interacts with any other public utility. As the other
15 public utilities that serve the City are required to pay City payroll tax and the PURTA tax,
16 the City proposed, and PWSA agreed as part of the negotiated settlement reflected in the
17 Cooperation Agreement, to pay those taxes. This comports, in my view, with the PUC's
18 requirement that the relationship between the City and PWSA be on a transactional basis.
19 Similar to the 2020-2024 phase-in of other items requiring monetary payment, the PURTA
20 tax payment PWSA pays to the City would receive the same 20/40/60/80/100 phase-in.

21

³ Docket Nos. M-2018-2640802 and M-2018-2640803, March 26, 2020 and June 18, 2020.

1 **Q. Please address Section 15 (relationship between PWSA and the City).**

2 A. This section states expressly what I believe the Agreement accomplishes as a whole: the
3 City agrees that henceforth interactions between the City and PWSA will be on a “business-
4 like, transactional basis,” and PWSA agrees that the City will treat PWSA under the
5 provisions of the Agreement in the way it treats other utilities operating in the City.

6

7 **Q. Do you have any additional comments about the particular provisions of the 2019
8 Cooperation Agreement or your negotiation of it on behalf of the City?**

9 A. I would only reemphasize that the City and PWSA worked long, hard, and in good faith to
10 hammer out the terms of the 2019 Cooperation Agreement, that it represents difficult
11 concessions both sides made, and that it creates a template for moving forward towards a
12 workable separation between the City and PWSA in the manner the legislature sought in
13 the 2017 legislation. I ask on behalf of the City that the PUC approve it in its entirety,
14 notwithstanding previous indications that the PUC may reject its critical phase-in
15 provisions.

16

17 **Q. Apart from the payment phase-in provisions, are there other aspects of the 2019
18 Cooperation Agreement that have a significant economic impact?**

19 A. Yes. Again, the 2019 Cooperation Agreement is a carefully balanced package that must be
20 reviewed and approved as a whole. It provides both economic benefits to the City and to
21 PWSA, consistent with a more transactional approach to the relationship. For example,
22 just as the City now will be paying for water and sewer usage and ALCOSAN charges,
23 PWSA will for the first time be reimbursing the City for pension costs for PWSA

1 employees that participate in the City's pension plan, for permit and license fees, for
2 payroll and PURTA taxes, and for street sweeping. The City and PWSA each need to
3 receive the benefits they bargained for. These are synergies and mutual benefits of
4 cooperating and maximizing cost reduction or control opportunities that benefit both.
5 Stripping any of these features from this carefully negotiated, integrated, and crafted
6 Cooperation Agreement, but assuming other benefits will remain, is bad policy and a bad
7 result that does not collectively benefit the interests of all. The whole idea of a free service
8 not in exchange for other benefits and the reality of who owns the assets along with
9 attendant strings is a fallacy and does not reflect how negotiated solutions to complex
10 problems are achieved by sophisticated parties to an agreement, such as the City and
11 PWSA.

12
13 3. Consequences of Disrupting Phase-in Provisions for Payment for Services

14 **Q. You stated earlier that in entering the negotiations for the 2019 Cooperation**
15 **Agreement, the City was concerned that any changes in the financial arrangements**
16 **between the City and PWSA that could strain the City's budget be phased in**
17 **gradually, and that Section 6.2 of the Agreement accomplishes that goal. Why is the**
18 **agreed-upon gradual phase-in of payment for water and fire hydrant service so**
19 **important to the City?**

20 **A.** As the City came to realize that the 1995 Cooperation Agreement would need to be
21 renegotiated and the no-cost water allotment likely would end, such that the City would be
22 required to pay for its water and sewer usage at City properties, including public buildings,
23 City parks, and that City instrumentalities, such as the Pittsburgh Zoo, Phipps

1 Conservatory, the National Aviary in Pittsburgh, and Schenley Golf Course would be
2 affected, we realized right away that immediate payment at the 100% level was not a
3 realistic possibility. The City was just emerging in early 2018 from a 14-year period (2004-
4 2018) of Act 47 “financially distressed” status. A municipality is placed in Act 47
5 financially distressed status when its fiscal integrity is jeopardized and threatens its ability
6 to provide for the health, safety, and welfare of its citizens. As part of its recovery plan,
7 the City, during this period, had imposed new taxes and raised the rate of existing taxes.
8 During the Act 47 years, the City also implemented deep budget cuts. We knew going into
9 the negotiations with PWSA that it would be extremely difficult to either raise taxes or
10 make further cuts in existing expenditures to accommodate a flash cut to paying 100% of
11 charges for water and sewer services that the City had never in its history paid out-of-
12 pocket to receive.

13
14 **Q. Are the City revenue circumstances any better now than they were when the City and**
15 **PWSA executed the 2019 Cooperation Agreement in October 2019?**

16 A. Present prospects for raising revenue through taxes are, of course, much worse since
17 October 2019 because of the business and entertainment event closures, unemployment,
18 and related economic devastation the COVID-19 pandemic caused that began in March
19 2020. Tax collections from March to May 2020 were down 25% from the comparable
20 period in 2019, and we estimate that revenues for the entirety of 2020 will be down 21%
21 from budget. We do not expect to recover fully from a revenue perspective until 2025. The
22 tax revenues that are most impacted by economic hardship triggered by the pandemic
23 are payroll, parking, earned income, and property taxes; these four taxes alone could see

1 \$97 million in losses just this year. In short, revenues are down and are likely to stay down
2 for the foreseeable future, requiring the City to make hard choices without even considering
3 the quadrupling of water expense that a flash cut to 100% payment for usage would mean.
4 In response to the pandemic-induced revenue drop, the City has already instituted a hiring
5 freeze across all departments and is considering 10% cuts in non-personnel spending across
6 all departments.

7
8 **Q. As far as you can tell, does the I&E positions or the recent Orders entered consider or**
9 **reflect any of this?**

10 A. Not that I can discern. We are very concerned that decisions are being made without the
11 best available investigation and information being presented to the Commission.

12
13 **Q. Where would the City find the revenue to immediately commence paying 100% of**
14 **PWSA's tariff rates for water and sewer services the City uses?**

15 A. The PUC's Bureau of I&E estimates that the value of the City's water usage is \$11.4
16 million. Docket Nos. M-2018-2640802 and M-2018-2640803, March 26, 2020 Order at
17 51-52. Other estimates, such as the one contained in the Pennsylvania Auditor General's
18 2017 audit of PWSA, estimates the bill at least \$6.8 million. *Id.* Recognizing that PWSA
19 has yet to have the PUC approve tariff rates for service to the City, the actual amount the
20 City would be required to pay at the 100% level is unknown. But I can say with certainty
21 that if the City were required immediately to pay PWSA's annual charges at the 100% level
22 in amounts anywhere near or above these estimates, the realistic options for finding the
23 money to do so would be to engage in further City job cuts, cuts in City services, and cuts

1 in discretionary spending. All of these measures would have a disproportionate adverse
2 impact on the City’s lower income residents.

3
4 **Q. Why would lower income City residents be disproportionately affected?**

5 A. Between Act 47 cuts and pandemic-related job cuts, the City has already pared back our
6 work force in many areas. Additional job cuts will have to come from public safety – police,
7 fire, paramedics, and EMTs. These cuts obviously will affect the individuals who will lose
8 employment, but also will affect the City residents they serve. City Police, paramedics, and
9 EMTs tend to be utilized to address medical issues, including hospital transport, more so
10 in low-income areas than in wealthier neighborhoods. Likewise, crime tends to be more of
11 a daily challenge for residents of low-income areas than wealthier areas, and public safety
12 cuts will have a greater impact on those low-income area residents.

13
14 **Q. Are there more concerns that are crucial to public interests and social safety and
15 welfare?**

16 A. Yes, when city services are cut, everyone is affected, but lower income individuals and
17 families with children are disproportionately affected because they are less financially able
18 to fill the void from other sources using their own funds, and thus more dependent on the
19 cut services. Cuts in discretionary spending typically work the same way. For instance:

- 20 • Closure or curtailing of operating hours at senior centers that become “cooling
21 centers” in summer months for needier seniors who lack home air conditioning will
22 disproportionately impact low-income seniors who may lack access to other
23 facilities with air conditioning or other social gathering venues, such as private

- 1 clubs;
- 2 • If the City is required immediately to pay 100% of the bill for water at City
3 swimming pools and splash parks, those facilities relied on disproportionately by
4 lower income residents and their children, will be curtailed or closed, as will low-
5 income residents lack access to privately funded members-only clubs;
 - 6 • Parks are another example. In more affluent neighborhoods, civic groups tend to
7 provide supplemental funding for parks and programs, but City parks in low-
8 income neighborhoods typically lack those outside resources; and
 - 9 • The impact on youth sports and the facilities that they play upon will be significant.
10 For example, youth sports leagues that rely on free City water at concession stands
11 will be affected.

12 So, the short answer is the City will need to cut discretionary services, and inevitably, the
13 poor and underprivileged will feel the brunt of it. I believe the Commission needs to factor
14 these considerations into any decision it makes concerning the transition the City and
15 PWSA are effectuating in the 2019 Cooperation Agreement, just as the City and PWSA
16 have done. To date, it appears to me that the Commission has overlooked, or has not been
17 sufficiently informed of, these hard, factual realities. They should be considered seriously
18 in the context of this proceeding and should prevail over any precise calculations of cost
19 causation or procedural arguments. The PUC is after all organized directly under the
20 Legislature and should have a broader view of all input before it makes a significant
21 decision that affects so many Pennsylvanians.

22

23

1 **Q. How would the gradual phase-in of payment for water and sewer services from 2020**
2 **to 2024, as agreed in the 2019 Cooperation Agreement, materially improve the City's**
3 **prospects for paying the bill and avoiding these negative impacts?**

4 A. The goal is to accommodate the new expense without upending existing budgets and
5 programs and jeopardizing existing obligations. The smaller the new expense to be
6 accommodated, the easier that goal is to achieve. In agreeing to the phase-in as presented
7 in the 2019 Cooperation Agreement, the City believed, and still believes, that the expense
8 can be met through a series of small changes year to year that in combination will increase
9 revenues and decrease expenses. In contrast, the burden of immediately paying 100% of a
10 large and brand-new expense disrupts existing budget projections and necessitates drastic
11 changes.

12
13 **Q. Since City taxpayers are the same population as PWSA ratepayers, does it really**
14 **cause harm if the City immediately moves to paying 100% for its usage, in that City**
15 **residents already are paying for the City's "free" water through PWSA rates that**
16 **would be lower but-for the free water allotment PWSA provides the City?**

17 A. The reality is much more complicated than the question suggests. Moving gradually to
18 100% payment for City usage, as the City has agreed to do in the 2019 Cooperation
19 Agreement rather than immediately as the PUC seems to think necessary, makes a big
20 difference. One reason is that even if there were a perfect match between City taxpayers
21 and PWSA ratepayers, and there is not, inequities would occur with immediate movement
22 to 100% because of timing differences between budget years, tax collection periods, and
23 PWSA rate setting. These timing differences can be smoothed out with the Cooperation

1 Agreement's agreed to four-year phase-in to 100%. More important are the differences in
2 respective taxpayer/ratepayer populations. For example, many low-income individuals
3 and families in the City reside in subsidized housing, where the PWSA customer is the
4 landlord and water is included in the rental payment; an increase in City taxes to enable the
5 City to pay for water immediately at the 100% level will adversely affect the low-income
6 population at many levels, but the City's payment of that revenue to PWSA will not confer
7 any economic benefit on those low-income renters in the form of a reduction in rental
8 payment or otherwise. Likewise, the City's need to cut jobs and services will have
9 immediate adverse effect on this population that may never provide them a benefit as
10 PWSA ratepayers. Another reason is that PWSA provides service to direct and bulk sale
11 customers outside the City, and while PWSA's provision of no-cost water to the City is
12 subsidized by rates those non-City customers pay, those non-City PWSA customers enjoy
13 the benefits of City services and use of City-affiliated entities without paying City taxes.
14 Half of the people who work in the City live in communities outside the City, and they
15 frequent and enjoy City-affiliated entities that presently receive no-cost water service, such
16 as the Pittsburgh Zoo, Phipps Conservatory, the National Aviary in Pittsburgh, and
17 Schenley Golf Course. Raising City taxes to pay for a flash cut to 100% payment for the
18 City and City-affiliated entities' water usage will immediately diminish the quality of life
19 in the City for all who use the City and its amenities, without conferring any immediate
20 benefit. Over time, of course, the proper matching of cost with cost causer for PWSA's
21 water and sewer services may be beneficial to all concerned, but the immediate shift the
22 PUC seems intent on ordering will create only inequity and hardship.

23

- 1 **Q. Does this conclude your direct testimony at this time?**
- 2 A. Yes, and I reserve the right to supplement this testimony as this matter proceeds.

'95 Co-Op Agreement

File No. 209 ¹⁸²³
Bill No. 1823
No. 269 Vol. 129 Page 211

IN COMMITTEE ON PUBLIC WORKS, WATER &
ENVIRONMENTAL SERVICES. Wednesday,
April 10, 1995. Read and held until
Monday, April 10, 1995.

RESOLUTION

Authorizing a Cooperation Agreement and
amendments thereto with the Pittsburgh Water
and Sewer Authority to provide for the creation
of a fully operating authority.

In Council, April 4, 1995, referred

to Committee on Public Works, Water & Environmental Services

Lerida M. Johnson-Wasler
Clerk

In Committee on Public Works, Water & Environmental Services

APR 10 1995 19, ordered to
be returned to Council with an affirmative recom-
mendation.

Lerida M. Johnson-Wasler
Clerk

In Council APR 11 1995

Bill read, by passed

Lerida M. Johnson-Wasler
Clerk

Presented by

Mr. Ricciardi

No.

269

RESOLUTION

Authorizing a Cooperation Agreement and amendments thereto with the Pittsburgh Water and Sewer Authority to provide for the creation of a fully operating authority.

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1.

The Mayor is hereby authorized to execute, on behalf of the City of Pittsburgh and in final form approved by the City Solicitor, a Cooperation Agreement with the Pittsburgh Water and Sewer Authority (the "Authority") providing for

1. The provision of certain services to the Authority by the City and payment therefore.
2. The recognition of the American Federation of State, County and Municipal Employees, District Council 84, Local 2719 (AFSCME 719); the American Federation of State, County and Municipal Employees, District Council 84, Local 2037 (AFSCME 2037); and the Pittsburgh Joint Collective Bargaining Committee (the "PJCBC") as collective bargaining agent for the employees of the Authority previously employed by the City and members of these unions.
3. The establishment of a coordinated bargaining committee among the City, AFSCME 2719, AFSCME 2037 and the Pittsburgh Water and Sewer Authority for purpose of collective bargaining.

SECTION 2 Any Resolution or Ordinance or part thereof conflicting with the provisions of this Resolution is hereby repealed so far as the same affects this Resolution.

Enacted in Council, this 11th day of April A.D. 19 95

Attest: *Linda M. Johnson Wescow*
Clerk of Council.

[Signature]
President of Council.

Mayor's Office

April 18 19 95

Approved:

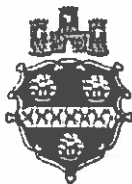
[Signature]
Mayor

Attest: *M. Linda Gangelwere*
Mayor's Secretary.

Recorded in Resolution Book, Vol. 129 Page 211, 24th day of April 19 95

APR 24 1995

EFFECTIVE DATE



City of Pittsburgh
Office of the Mayor

April 3, 1995

APR 3 1995 12:40

President and Members
City Council
City of Pittsburgh

Dear President and Members:

Attached are two resolutions dealing with the Pittsburgh Water and Sewer Authority which support our efforts to make the Authority a fully operating authority.

The first resolution deals with the termination of the management provisions of the existing Lease and Management Agreement dated as of March 1, 1984, between the City and the Authority and the replacement thereof by a Cooperation Agreement redefining the services for which the Authority will rely on the City. The terms of this Agreement with respect to the services to be performed by the City have not changed significantly since you approved Resolution No. 12 of 1995 (approved January 24, 1995) which addressed such a Cooperation Agreement. The form of the documentation, however, has changed.

The second resolution provides for the Authority to acquire control of the Water and Sewer System pursuant to a lease providing for up front, lump sum, all inclusive rent payments and provides that upon expiration of the term of the lease, the Authority will have the option to acquire the water system.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom Murphy".

Tom Murphy

COPY

COOPERATION AGREEMENT

Dated as of the 15th day June, 1995 but effective as of January 1, 1995 (the "Effective Date") between the City of Pittsburgh, a municipal corporation of the Commonwealth of Pennsylvania (the "City") and The Pittsburgh Water and Sewer Authority, a body corporate and politic, organized and existing under the laws of the Commonwealth of Pennsylvania (the "Authority").

WHEREAS, pursuant to a Lease and Management Agreement dated March 29, 1984 (the "Lease"), the Authority and the City provided for (i) the lease of the then existing water and sewer systems (the "System") to the Authority by the City; (ii) the operation and maintenance of the System by the Authority and (iii) the creation of an agency relationship between the Authority and City whereby the City provided services necessary to operate the System as agent of the Authority; and

WHEREAS, the City and the Authority have agreed to (i) provide for the termination of the City's status as an agent for the Authority, and (ii) provide for the provision of certain services to the Authority by the City;

NOW THEREFORE, in consideration of the mutual premises and intending to be legally bound hereby, the parties agree as follows:

I. DEFINITIONS:

"Capital Expenses" shall mean all expenditures made by the Authority or by the City, acting on behalf of the Authority, in carrying out the Construction Project and any Capital Additions to the System except for those hereinafter excluded. These expenditures shall include but not be limited to all engineering expenses whether undertaken by Authority or City employees or subcontracted by the City on behalf of the Authority.

"Actual Direct Expenses" shall mean all expenses directly related to the Authority (i.e., employee medical insurance premiums) and incurred by the City on behalf of the Authority. Expenses in this category are either documented by a third party invoice or specifically identifiable in the City's records. These expenses shall be determined by the City and the Authority on a mutually agree-upon basis. Actual Direct Expenses shall be paid monthly by the Authority to the City.

"Public Works Salaries and Wages" shall mean the apportioned share of Public Works Salaries and Wages directly attributable to the operation and maintenance of the sewer system. Public Works Salaries and Wages shall be paid monthly by the Authority to the City.

"Saw Mill Run Project" shall mean all those capital expenditures necessary to improve the sewer system in the Saw Mill Run Basin as set forth in pages 79 through 81 of the Green International, Inc. Water and Sewer Systems contract with the City dated December 9, 1983.

"Overhead Expenses" shall mean all expenses indirectly related to the Authority (i.e., payroll processing and benefits administration) and incurred by the City in relation to providing materials, services, supplies, etc. to the Authority under the terms of this Agreement. Expenses in this category are not documented by a third party invoice or specifically identifiable in the City's records. Overhead expense rates are to be determined annually by a City indirect cost allocation plan prepared by a certified public accounting firm. Overhead Expenses shall be paid monthly by the Authority to the City.

"System" shall mean all plants and equipment, structures, facilities, lands, easements, rights of way, water lines and sewer lines, patents, copyrights, contracts with municipalities or authorities outside the boundaries of the City, water treatment plants, pumping facilities, reservoirs, storage tanks, distribution mains, service lines and appurtenances, sewers, inlets, manholes, diversion structures, pumping stations, force mains, including but not limited to the assets described in Sections 3.3 and 4.3 of the System Evaluation prepared by Green International, Inc. and dated December 9, 1983, as amended and supplemented, which report is incorporated herein by reference.

II. TERMINATION OF AGENCY RELATIONSHIP:

A. As of the Effective Date the agency relationship between the City and the Authority provided for in the Lease is terminated. The Authority, as of the Effective Date, will assume sole responsibility and prerogative for management and operation of the System and all risks attenuated thereto.

B. As of the Effective Date all positions in the Water Department and certain positions in the Water and Sewer Division of the Department of Engineering and Construction and the Department of Public Works listed on Exhibit A hereto are eliminated from the City of Pittsburgh budget and those positions will be created by the Authority and filled in the manner required by the applicable collective bargaining agreements. City employees in those positions receiving worker's compensation at the time of the elimination of those positions by the City shall be entitled to the same position at the Authority upon their eligibility to return to work if such is within 24 months of their last day of work, all in accord with letters of the Authority dated December 19, 1994, to such employees.

C. The Authority shall recognize the American Federation of State, County and Municipal Employees, District Council 84, Local 2719 (AFSCME 2719); the American Federation of State, County and Municipal Employees, District Council 84, Local 2037 (AFSCME 2037); and the Pittsburgh Joint Collective Bargaining Committee (the "PJCBC") as the collective bargaining agents for the employees of the Authority previously employed by the City and shall negotiate with each of them a collective bargaining agreement that offers such employees wages, benefits and other terms and conditions that are at least equivalent to the terms and conditions offered to City employees for the contract term commencing January 1, 1995.

D. The Authority shall offer non-union employees whose positions are terminated by the City benefits which are at least equivalent to the benefits currently provided by the City and including continuity of participation in the City pension plan. ✓

E. The Authority certifies that it has accepted the provisions of the Workers' Compensation and Occupational Disease Acts, as amended and supplemented, insofar as the performance of any work of the Authority and that it will insure or provide for the insurance of its liability thereunder in accordance with the terms of the acts.

F. The City shall transfer, to the Authority on Effective Date or as soon as practicable thereafter, the documents, equipment, files, maps, records and reference data related to the System, (the "Inventory") acquired by the City for the benefit of the Authority since the effective date of the Lease. All Inventory transferred shall be listed and approved for transfer by the Department of General Services.

G. On a date to be determined by the Authority but not prior to January 1, 1996 and with a minimum of ninety (90) days written notice, the City shall transfer any personnel then assigned to the Water and Sewer Division of the Department of Engineering and Construction or any other City department and assigned to the operation and maintenance of the System as listed on Exhibit B, to the Authority. Any related equipment, files, maps, records and reference data shall also be transferred at that time.

H. All accounts receivable of the Authority, whether previously billed or not by the City, upon collection will be paid to the Authority.

I. As between the City and the Authority, it is understood and agreed that the City will continue to retain responsibility and liability for all Capital Expenses on the Saw Mill Run project and the Authority shall not be responsible for such Capital Expenses.

III. SERVICES TO BE PROVIDED BY THE CITY TO THE AUTHORITY:

A. Subject to the general supervision, direction and control of the Authority in the exercise and discharge of its public duties under the Municipality Authorities Act together with other applicable laws and regulations, the City shall render to the Authority the following services which shall be paid for as provided in Section VII below:

1. Department of Public Works:

The Department of Public Works shall continue to operate and maintain the sewer system portion of the System which is the sewers, inlets, manholes, diversion structures, pumping stations and force mains (the "Sewer System") within the City until such time as that function is transferred to the Authority, pursuant to Section II. G. The services to be provided shall include, but not be limited to, the following:

- (a) TV inspection of sewers.
- (b) Cleaning of sewers, catch basins and manholes.
- (c) Repair of catch basins and manholes.
- (d) Repair and/or replacement of sewers.
- (e) Administration of the Annual Catch Basin/Manhole Contract.
- (f) Administration of the Annual Catch Basin Cleaning Contract.
- (g) Operation and maintenance of diversion chambers and sewage pump stations.
- (h) Investigation of complaints and problems involving sewer system.
- (i) Working with Authority staff in the planning, design and construction phase management of capital improvement projects performed by the Authority.
- (j) Maintaining files, records and maps of the sewer system.
- (k) As long as the Asphalt Plant is owned by the City, furnish asphalt for use on restoration or construction projects performed or contracted by the Authority.
- (l) Any other services as may be agreed upon by the parties.

2. Department of Engineering and Construction:

- (a) Print plans, specifications and contract documents as required by the Authority.
- (b) Perform field survey services as requested by the Authority.
- (c) Any other services as may be agreed upon by the parties.

3. Department of General Services:

- (a) Provide telephone and data services for the Authority.
- (b) Provide radio communication services for the Authority.
- (c) Take and process photos prior to construction for various capital improvement projects as requested by the Authority.

- (d) Provide vehicles, maintenance, service, repairs and insurance as set forth in Article V hereof.
- (e) Furnish fuel and other fluids necessary for Authority vehicles and equipment.
- (f) Any other services as may be agreed upon by the parties.

4. Law Department:

- (a) Represent the Authority in actions against it as requested by the Authority.
- (b) Provide services for obtaining property and/or rights-of-way as requested by the Authority.
- (c) Provide services associated with assessments for sewer service as requested by the Authority.
- (d) Any other services as may be agreed upon by the parties.

5. City Information System:

- (a) Provide "mainframe computer services" needed for customer billing, financial reporting and processing of payroll and invoices and other functions.
- (b) Any other services as may be agreed upon by the parties.

6. Finance Department:

- (a) Issue payroll checks for the Authority staff.
- (b) Administer benefit programs, including but not limited to the pension plan, health care, dental benefits and worker's compensation claims (as provided herein).
- (c) Any other services as may be agreed upon by the parties.

B. The City shall furnish such other services to the Authority at such times as may be required and requested by the Authority.

IV. CITY CAPITAL PROJECTS:

From time to time the City undertakes capital improvement projects which include construction, replacement and/or modification of the System as a part of their improvements. The Authority shall reimburse the City for all Capital Expenses incurred by the City for such System improvements as follows:

A. Current Projects:

- (i) The Authority shall pay the City for all City capital projects which are under contract or completed as of the Effective Date but for which the City has not been fully reimbursed by the Authority. The City shall

invoice the Authority for reimbursement, with the invoice including backup data to adequately support the invoice. Such backup data shall include a description of the project, the System facilities constructed or to be constructed and the cost, not to be exceeded, of such improvements.

- (ii) To be reimbursed for City capital projects awarded after the Effective Date, which include construction replacement and/or modification of the System, the Authority shall approve the proposed construction plans and specifications, as they relate to the System improvements, prior to the City advertising for bids for the project. The City shall invoice the Authority for reimbursement with the invoice including backup data to adequately support the invoice.

V. VEHICLES:

A. The City hereby subleases to the Authority vehicles leased to the City by the Equipment Leasing Authority and currently being used by the Authority. The vehicles will be used in the ordinary and usual work for which they are designed provided that any such use is in conformity with all applicable laws, any insurance policies and any warranties of the manufacturer with respect to the vehicles.

B. The City agrees to maintain, service, repair and insure said vehicles to the same extent as the City would, in the prudent management of its properties, for similar equipment owned or leased by the City and to the extent required to maintain the vehicles in good operating condition and in compliance with any applicable requirement of law or of any governmental authority having jurisdiction thereof.

C. The Authority will not permit any vehicles to be used or operated in violation of any law or any rule, regulation or order of any governmental authority having jurisdiction thereof. The Authority shall be responsible for the payment of all fines and penalties resulting from the Authority's use of the vehicles.

D. The Authority may return any vehicles to the City at its discretion at any time and shall return such vehicles at such location as the parties shall agree. Upon the expiration of the term of this Agreement or any prior termination of the Agreement for any reason, the Authority shall return any remaining vehicles to the City.

E. The Authority will reimburse the City for the costs of the services provided under the sublease in accordance with the terms of this Agreement.

VI. WATER EXONERATION HEARING BOARD:

A. The City shall maintain in existence the Water Exoneration Hearing Board with such changes to its composition as shall be recommended by the Authority and approved by City Council. After hearings, the Board shall recommend to the Authority the manner in which disputes as to rates or service shall be resolved, including recommendations as to exonerations, but the decision of the Board of the Authority shall be final in all such cases, subject to the right of appeal to the Court of Common Pleas under Local Agency Law.

VII. PAYMENTS BY THE AUTHORITY TO THE CITY:

A. The Authority shall reimburse the City for all City Expenses incurred by the City through December 31, 1994, inclusive, for the operation and maintenance of the System in accordance with the provisions of the Lease and Maintenance Agreement dated March 29, 1984.

B. The Authority shall reimburse the City for equalization payments made by the City to the Pennsylvania American Water Company or upon mutual agreement, make such payments directly to the Pennsylvania American Water Company.

C. Beginning January 1, 1995 and for each year thereafter, the City shall budget and pay expenditures required to provide the services under this Cooperation Agreement (including Actual Direct Expenses, Public Works Salaries and Wages and Overhead Expenses). The Authority shall pay the City monthly Actual Direct Expenses, Public Works Salaries and Wages and Overhead Expenses for such services where applicable.

D. In addition to other payments to the City provided for herein, the City shall be entitled to receive up to 600,000,000 gallons of water each year to be used by the City, its departments, agencies and instrumentalities (i.e., Pittsburgh Zoo, Phipps Conservatory, National Aviary in Pittsburgh and Schenley Golf Course) and as the City may be contractually obligated to provide as of the Effective Date hereof. The City shall not receive a credit for any water not so used. To the extent in excess of 600,000,000 is used, the Authority may offset that cost against moneys owed the City hereunder.

E. The Authority will reimburse the City for all worker's compensation benefits paid by the city on behalf of those employees in positions described in II B above. As to worker's compensation claims that may be filed subsequent to the date the positions are eliminated from the City budget, for injuries occurring prior to the date the positions are eliminated from the City budget the Authority will either directly pay the claim or reimburse the City for any benefits paid.

F. Neither the credit or taxing power of the City shall be pledged for payment of any Authority Indebtedness, and the City shall not be liable for any Authority debt payments.

G. The parties hereby agree that the Authority at its discretion may terminate any or all of services provided by the City. Such termination shall be effective upon a minimum of ninety (90) days written notice from the Authority to the City.

VIII. RATES:

A. The Authority shall establish rates pursuant to the covenants contained in the indenture securing the Authority's debt obligations, which shall be in an amount sufficient but no higher than necessary to meet the Authority's obligations thereunder together with the City's Overhead Expenses, all reasonable contingencies and to meet its obligations as they come due.

B. In conformity with Article III, Section Two of the By-laws of the Authority, the Authority shall hold a regular meeting of its Board each year to consider or establish rates. It is understood and agreed that the Authority may meet at any other times if the Authority determines that its existing rates will not produce sufficient revenues to meet its outstanding obligations and otherwise as needed pursuant to VIII A above.

IX. COOPERATION:

A. The City and the Authority shall cooperate with each other to the end that reasonable and adequate service shall be provided to customers of the system.

B. The City shall grant to the Authority all necessary easements and rights of way which may be required in addition to those heretofore leased by the City to the Authority.

C. The Authority shall not be required to pay for fees or charges for City permits or licenses.

X. INSURANCE AND INDEMNIFICATION:

A. The City shall and hereby does assume sole responsibility for all claims, including employee claims, demands, lawsuits, judgments against the City or the Authority arising from any work or service provided (i) in connection with the System on behalf of the Authority before the Effective Date of this Agreement and (ii) in connection with the Sewer System on or after the Effective Date.

B. The City may purchase excess limits insurance applicable to the Sewer System and, if it does so, it shall include the Authority as an additional insured; and the City shall be solely responsible for the payment of the premium.

C. The City shall and hereby does assume responsibility for all claims, demands, lawsuits, judgments against the City or the Authority arising from any work or service provided

to the Authority on or after the effective date of this Agreement; and the City does hereby indemnify, save harmless and agree to defend the Authority from and against all such claims, demands, lawsuits and judgments arising from any work or service provided to the Authority.

D. The City shall indemnify, save and hold harmless, and defend Authority, its officers, agents and employees from all liens, charges, claims, demands, losses, costs, judgments, liabilities and damages of every kind and nature whatsoever, including court costs and attorney's fees, arising by reason of City's intentional or negligent failure to perform any services under this Agreement; any act, error or omission of the City or any agent, employee, licensee, contractor or subcontractor of City, intentional or negligent, of any of the terms, conditions or provisions of this Agreement.

E. The City hereby indemnifies and saves harmless the Authority from any and all claims, including costs and reasonable attorney fees, based upon alleged improper expenditures made by the City in violation of Federal, State, or Local Law or if contrary to the provisions of any indenture or similar agreement securing Authority indebtedness.

XI. DEFICIENCIES IN PERFORMANCE:

If in the opinion of the Authority the City fails to operate and maintain the Sewer System in accordance with the standards prevailing prior to the lease of said system by the City to the Authority, the Authority shall so advise the City in writing, describing the specific deficiencies on which the opinion is based, and shall request the City to explain in writing said deficiency within thirty days of receipt of said notice. If the City fails to satisfy the Authority within said period, the Authority may direct the City in writing to correct such deficiency. The City shall thereupon take steps toward correction of said deficiency within sixty days after receipt by it of written notice by the Authority, or, if the City disagrees, it may exercise its rights to call for arbitration under Article XII hereof within said sixty day period. If the City shall fail to take steps to correct the deficiency within sixty days after receipt of the Authority notice or within sixty days after an adverse arbitration decision, whichever is later, then the Authority may itself cause the corrective work to be done. It is understood and agreed that all such corrective work shall be undertaken at the Authority's expense, and that the City assumes no liability for costs incurred to correct any of such deficiencies.

XII. SETTLEMENT OF DISPUTES:

In the event of any dispute between the Authority and the City with respect to the matters set forth in Paragraph XI of this Agreement, excepting, however, disputes arising out of renegotiation hereof, such disputes shall be settled by arbitration in accordance with the provisions of the Act of April 25, 1927 P.L. 381 as amended, of the Commonwealth of Pennsylvania. In any such case three arbitrators shall be appointed, one by the Authority, one by the City, and one by the two arbitrators so appointed by the Authority and the City. The

decision of a majority of the arbitrators shall be binding and conclusive upon the Authority and the City. In the event of the failure of the two arbitrators appointed by the Authority and the City to effect the appointment of a third arbitrator within two weeks after the appointment of the second, the third arbitrator shall be appointed by the trustee at that time under the trust indenture. The expense of such arbitration, exclusive of expenses of each party in its own behalf, shall be born equally by the parties.

III. AMENDMENTS:

This agreement may be amended in any respect by mutual written agreement of the parties.

IV. NOTICES:

All notices required under this Agreement shall be in writing and shall be mailed by certified mail or delivered as follows:

1. Notices to the Authority shall be sent to the Executive Director, the Pittsburgh Water and Sewer Authority, 441 Smithfield Street, Pittsburgh, Pennsylvania 15222.
2. Notices to the City shall be sent to Mayor, City of Pittsburgh, Pittsburgh, Pennsylvania 15219.

XV. ASSIGNMENT:

This Agreement shall not be assignable by either party without the written consent of the other.

XVI. TERM AND TERMINATION:

The term of this Agreement shall be forty (40) years commencing on the Effective Date. The City shall have the right to terminate this Agreement at any time upon ninety (90) days written notice to the Authority; provided, however, that any such termination shall be subject to the City providing for the payment in full of all existing liabilities, contingent and otherwise, of the Authority. The Authority shall have the right to terminate this Agreement at any time upon ninety (90) days written notice to the City.

The City understands that it may be required to enter into a supplemental agreement to extend the term of this Cooperation Agreement for such period as may be necessary to cover future financing by the Authority of Capital Additions.

EXHIBIT B

Positions to be Transferred
at a Later Date

	<u>Position</u>	<u>Current Employee</u>	<u>Union</u>
1.	Project Engineer, E&C	Bailey	Non-Union
2.	Engineer Tech. III, E&C	Waldorf	Non-Union
3.	Staff Engineer, E&C	Kasper	AFSCME
4.	Engineer II, E&C	vacant	AFSCME
5.	Engineer II, E&C	Eichelman	AFSCME
6.	Clerk Typist II, E&C	Schaub	AFSCME

Notwithstanding the foregoing provision for extension of the term of this Agreement to cover future financings, it is understood and agreed that, subject to appropriate amendment of the Article of Incorporation of the Authority extending its term of existence, this Cooperation Agreement shall be automatically renewed at the expiration of three (3) additional terms of five (5) years each, unless either party at least one year prior to the expiration of each renewal term shall request in writing a renegotiation for the subsequent term. If such renegotiations fail to produce a written agreement within the twelve month period, this Agreement shall continue for at least six (6) months after the end of the then current term.

XVI. GOVERNING LAW:

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

XVII. CONFLICT:

To the extent that any provision hereof conflicts with any provision of any Trust Indenture securing any indebtedness of the Authority, the provisions of the Trust Indenture shall prevail.

XIX. SEVERABILITY:

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement; and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein.

XX. MISCELLANEOUS:

This Agreement shall be effective as of January 1, 1995.

The City is authorized to enter into this Agreement pursuant to Resolution No. 12, approved January 24, 1995, effective January 24, 1995; and the Authority is authorized to do so pursuant to Resolution No. 47 of 1995 duly adopted at a special meeting of its board held on March 31, 1995.

IN WITNESS WHEREOF, This Agreement has been duly executed this 27th day of July, 1995.

ATTEST:

Lowan A. Winanda
Secretary Treasurer

ATTEST:

M. Linda Hengeman
Secretary to the Mayor

THE PITTSBURGH WATER AND SEWER
AUTHORITY

By [Signature]
Authorized Officer

CITY OF PITTSBURGH

By [Signature]
Mayor

Approved as to Form:

[Signature]
City Solicitor

Positions Transferred
as of Effective Date

	<u>Position</u>	<u>Current Employee</u>	<u>Union</u>
1.	Project Manager, E&C	Borneman	Non-Union
2.	Project Engineer, E&C	Jones	Non-Union
3.	Staff Engineer, E&C	Troianos	AFSCME
4.	Project Manager, Public Works	Lockard	Non-Union

CAPITAL LEASE AGREEMENT

THIS AGREEMENT, is made and entered into as of July 15, 1995, effective July 27, 1995 (the "Effective Date"), by and between the CITY OF PITTSBURGH (the "Lessor") having an office at City County Building, Pittsburgh, Pennsylvania 15219;

A
N
D

THE PITTSBURGH WATER AND SEWER AUTHORITY, having its principal office at 441 Smithfield Street, Pittsburgh, Pennsylvania 15222 (the "Lessee").

WITNESSETH:

WHEREAS, the Lessor desires to lease to Lessee and the Lessee desires to lease from Lessor, certain assets located in and around the City of Pittsburgh and used in connection with the operation of a water and sewer system by the Lessee under a Lease and Management Agreement dated March 29, 1984 (the "Lease and Management Agreement"), as more fully described herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto, intending to be legally bound hereby, do hereby agree as follows:

1. Termination of Existing Lease. Lessor and the Lessee hereby agree that on the Effective Date of this Lease, the Lease and Management Agreement shall terminate by mutual agreement of the Lessor and the Lessee and all obligations of either party thereunder shall cease.

2. Demise of Premises and Assignment of Contracts.

a. The Lessor hereby demises and lets to the Lessee, and the Lessee hereby takes and leases from the Lessor, for the term and upon the provisions hereinafter specified, the following described property (collectively the "Leased Property"): (i) the entire network of water and sewage transmission pipelines as detailed on the Lessee's engineering maps, all water storage facilities (collectively the "System") and certain land and buildings (the "Real Property"), both the System and the Real Property are more fully described on Exhibit A hereto, (ii) all fixtures relating to the Real Property, (iii) all equipment used in connection with or related to the operation of the System (the "Equipment"), (iv) all water and sewage transmission pipelines dedicated by builders or developers subsequent to the Effective Date and all assets associated with or used in connection with such pipelines, (v) all spare parts wherever

located and used in connection with the operation of the Equipment, and (vi) all inventory used in connection with the operation of the Equipment; provided, however, that the Leased Property shall not include the assets set forth on Exhibit B hereto.

b. Lessor hereby assigns to Lessee and Lessee hereby assumes all contracts, leases, permits, licenses and other instruments (collectively, the "Contracts") used in connection with the operation of the System, including but not limited to those listed on Exhibit A hereto. Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any contract or any right or benefit arising thereunder or resulting therefrom if an attempted transfer or assignment thereof, without the consent of a third party thereto, would constitute a breach thereof or in any way affect the rights of Lessor or Lessee thereunder. If such consent is not obtained, or if an attempted transfer or assignment thereof would be ineffective or would affect the rights of Lessor thereunder so that Lessee would not in fact receive all such rights, Lessor shall cooperate with Lessee in any arrangement designed to provide for Lessee the benefits under any such contracts, or any claim or right or any benefit arising thereunder or resulting therefrom, including, without limitation, enforcement for the benefit of Lessee of any and all rights of Lessor against a third party thereto arising out of the breach or cancellation by such third party or otherwise.

c. Other than liabilities arising out of operation of the Leased Premises or the Contracts subsequent to the Effective Date, Lessee does not, pursuant to this Lease, assume any liabilities or obligations of Lessor.

3. Term.

(a) Subject to the provisions hereof, the Lessee shall have and hold the Leased Property for a term commencing as of July 15, 1995 and ending on September 1, 2025 at 12:00 midnight (the "Term").

(b) At the expiration of the Term the Lessee shall have the option to acquire all of the Leased Property from the Lessor in consideration of the payment of one dollar (\$1.00) in immediately available funds by the Lessee to the Lessor.

4. Rent. The Lessee shall pay to the Lessor as rent for the Term the total sum of One Hundred One Million Four Hundred Sixteen Thousand Nine Hundred Seventy-Four Dollars and Sixty Cents (\$101,416,974.60) as follows:

(a) The Lessee on the scheduled payment dates shall pay to the Lessor in immediately-available funds the following amounts (the "Capital Lease Payments"):

<u>Payment Date</u>	<u>Payment Amount</u>
July 27, 1995	\$35,000,000
January 2, 1996	\$20,000,000

August 1, 1996	\$20,000,000
January 2, 1997	\$21,017,249.60

(b) The Lessee shall receive a credit of Five Million Three Hundred Ninety-Nine Thousand Seven Hundred Twenty-Five Dollars (\$5,399,725) based on prepayments calculated under generally accepted accounting principles at December 31, 1994 and made under the Lease and Management Agreement prior to the Effective Date (the "Credit").

The Capital Lease Payments and the Credit are collectively referred to herein as the "Rent."

5. Bond Contingency. It is expressly agreed by the Lessor that the obligations of the Lessee hereunder are contingent on the Lessee's successful issuance of the Lessee's \$103,020,000 aggregate principal amount Water and Sewer System Subordinate Revenue Bonds, Series B of 1995 (the "Bonds") to finance this Lease. If for any reason the Lessee is unable to issue the Bonds, the Lease and Management Agreement shall remain in full force and effect unmodified by this Lease.

From and after the issuance of the Bonds, the Lessor shall not take any actions that will adversely affect the tax exempt status of the Bonds.

6. Use of Leased Premises; Quiet Enjoyment.

(a) The Lessee may occupy and use the Leased Property in order to provide water and sewer services and services incidental thereto to customers in and around the City of Pittsburgh and other purposes consistent with the public purposes of the Lessee. Lessee shall not use or occupy or permit any Leased Property to be used or occupied, nor do or permit anything to be done in or on any of the Leased Property, in a manner which would materially violate any law or legal requirement.

(b) Subject to the provisions hereof, so long as no Event of Default has occurred and is continuing, Lessor covenants to do no act to disturb the peaceful and quiet occupation and enjoyment of the Leased Property by Lessee, provided that Lessor may enter upon and examine any of the Property at such reasonable times as Lessor and Lessee based upon their mutual convenience may select for the purpose of inspecting the Leased Property, verifying compliance or non-compliance by Lessee with its obligations hereunder and the existence or non-existence of any Event of Default or event which with the passage of time and/or notice would constitute an Event of Default.

(c) During the term of this Lease, Lessor covenants not to assign, sell, convey or transfer any right, title or interest in or to the Leased Property or create, incur, assume or suffer to exist, directly or indirectly, any lien, encumbrance or security interest of any kind on the Leased Property, other than the encumbrances set forth on Exhibit D hereto or other encumbrances existing as of the Effective Date that do not materially detract from the value or

interfere with the present use of any of the Leased Property or otherwise materially impair its intended use.

7. Representations and Warranties of the Lessor. The Lessor hereby represents and warrants to the Lessee the following:

(a) Organization; Power; Good Standing. The Lessor has all requisite power and authority to own, operate and lease its properties, to carry on its business as now being conducted and to enter into this Lease and perform its obligations hereunder.

(b) Authority Relative to Lease. The execution, delivery and performance of this Lease by the Lessor will have been duly and effectively authorized by all necessary action by the Lessor. This Lease has been duly executed by the Lessor and is a valid, legally binding and enforceable obligation of the Lessor.

(c) Effect of Lease. The execution, delivery and performance of this Lease by the Lessor and the consummation of the transactions contemplated hereby will not (i) require the consent, approval or authorization of any person, corporation, partnership, joint venture or other business association or public authority (other than the City Council of the Lessor); (ii) violate, with or without the giving of notice or the passage of time, or both, any provisions of law or statute or any rule, regulation, order, award, judgment or decree of any court or governmental authority applicable to the Lessor; or (iii) conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any of the Leased Property pursuant to any charter, bylaw, indenture, mortgage, lease, contract, agreement or other instrument, or any order, judgment, award, decree, statute, ordinance, regulation or any other restriction of any kind or character, to which the Lessor is a party, or by which the Lessor or any of the Leased Property may be bound.

(d) Absence of Certain Changes or Events. Except as otherwise disclosed in Exhibit C hereto, with regard to the Leased Property and the Contracts, the Lessor has not:

(i) mortgaged, pledged or subjected to any lien, charge, security interest or to any other encumbrance any of the Leased Property or the Contracts (whether tangible or intangible); and

(ii) suffered any material casualty loss or damage to the Leased Property, whether or not such loss or damage shall have been covered by insurance.

(e) Title to Properties; Absence of Liens and Encumbrances; Leases.

(i) The Lessor has good and marketable title to all of the Real Property and good title to all of the Leased Property, tangible and intangible, free and clear of

all claims and encumbrances (including all property reflected in Exhibit A hereto), other than (i) as specifically disclosed in Exhibit D hereto, and (ii) such imperfections of title, easements, liens, pledges, charges and encumbrances, if any, as do not materially detract from the value or interfere with the present use of any of the Leased Property or otherwise materially impair its intended use;

(ii) All leases and easements pursuant to which the Lessor, leases or uses any real or personal property included in the Leased Property are valid and binding against the Lessor, in accordance with their terms and there is not under any of such leases or easements any existing default by the Lessor, event of default by the Lessor, or event which with notice or lapse of time, or both, would constitute a default by the Lessor (and in respect of which the Lessor has not taken adequate steps to prevent such a default or event of default from occurring). Except as set forth on Exhibit D hereto, none of the rights of the Lessor under any of such leases or easements is subject to termination or modification as the result of the transactions contemplated hereby.

(f) Contracts. To the knowledge of Lessor, all of the Contracts are valid and enforceable in accordance with their terms against Lessor and against the other parties to such Contracts in all material respects.

(g) List of Properties, Contracts and Other Data. Exhibit A hereto is a list setting forth the Leased Property and the Contracts.

(h) Litigation. Except as disclosed in Exhibit E hereto, there are no claims, actions, suits, proceedings or investigations pending or, to the Lessor's knowledge, threatened against or affecting the Leased Property or the Contracts at law or in equity or in admiralty, or before or by any federal, state, municipal or governmental or nongovernmental department, commission, board, bureau, agency or instrumentality, United States or foreign which would have a material adverse effect on the Leased Property or the Contracts.

(i) Licenses; Permits; Authorization. Exhibit F hereto is a description of all approvals, authorizations, consents, licenses, orders and permits of all governmental agencies, whether United States, state or local, issued to or in favor of the Lessor with respect to the operation of the Leased Property.

(j) Environmental Matters.

(i) In connection with the Leased Property, there are no unresolved notices of violation, orders, claims, citations, complaints, penalty assessments, suits or other proceedings, administrative, civil, criminal, at law or in equity, pending against the Lessor and, to the knowledge of the Lessor, no investigation or review is pending or threatened against the Lessor by any governmental entity or third party with respect to any alleged violation of any federal, state or local environmental law, regulation, ordinance, standard, permit or order in connection with the conduct of the System.

(ii) In connection with the operation of the Leased Property to the Lessor's knowledge, the Lessor is not in violation of any environmental law.

(iii) Since 1987, except as reported on The Superfund Amendments and Reauthorization Act of 1986, Title III, Section 313, Toxic Release Inventory Reporting Form Rs ("Toxic Substance Release Reports"), to the Lessor's knowledge, no hazardous, toxic or polluting substances have been released, discharged or disposed of at or from property now or formerly owned or operated by the Lessor and part of the Leased Property.

(iv) Except as listed on Exhibit G hereto, to the Lessor's knowledge, there are no outstanding public notices regarding noncompliance with applicable state and federal Safe Drinking Water Act rules and regulations, no temporary emergency actions, no public notices regarding lead, nor any variances or exemptions from MCL's or treatment techniques.

(v) Notwithstanding anything herein to the contrary, Lessor shall notify Lessee of any violation, orders, claims, citations, complaints, penalty assessments, suits or other proceedings, administrative, civil, criminal, at law or in equity, Lessor receives in connection with the Leased Property.

8. Representations and Warranties of the Lessee. The Lessee represents and warrants to the Lessor as follows:

(a) Organization; Good Standing; Power. On the Closing Date the Lessee will be a municipal authority duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and will have all requisite power and authority to own, lease and operate its properties and the Leased Property to carry on its business as now being conducted and the business conducted in connection with the Leased Property and to enter into this Lease and perform its obligations.

(b) Authority Relative to Lease. On the Closing Date, the execution, delivery and performance of this Lease and the transactions contemplated hereby and thereby by the Lessee will have been duly and effectively authorized and ratified by all necessary action by the Lessee. This Lease has been duly executed by Lessee and is a valid, legally binding and enforceable obligation of Lessee.

(c) Effect of Lease. The execution, delivery and performance of this Lease and the consummation of the transactions contemplated hereby will not (i) require the consent, approval or authorization of any person, corporation, partnership, joint venture or other business association or other public authority (other than the Board of the Lessee); (ii) violate, with or without the giving of notice or the passage of time, or both, any provisions of law or statute or any rule, regulation, order, award, judgment or decree of any court or governmental authority applicable to the Lessee; or (iii) conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any of the properties or assets of the Lessee pursuant to any indenture,

corporate charter, bylaw, mortgage, deed of trust, lease, contract, agreement or other instrument or any order, judgement, award, decree, statute, ordinance, regulation or any other restriction of any kind or character, to which the Lessee is a party, or by which the Lessee or any of its assets or properties may be bound.

(d) Litigation. Except as described on Exhibit H hereto, there are no claims, actions, suits, proceedings or investigations pending against the Lessee, or to the best of Lessee's knowledge, threatened, that would have a material adverse effect on the transaction contemplated hereby.

9. Transactions prior to the Effective Date.

(a) Permits. From and after the date hereof, the Lessor shall, upon the Lessee's reasonable request, provide reasonable assistance to the Lessee in obtaining transfer of any environmental or operating permits and licenses issued or held by the Lessor and necessary for the Lessee to conduct its operations with the Leased Property.

(b) Consents. The Lessor agrees that it shall obtain prior to the Effective Date all material consents, assignments, and approvals as may be required in order to enable it to perform its obligations hereunder, including, but not limited to, all material consents and approvals required to permit it to make the transfers to the Lessee contemplated herein so that the Lessee may enjoy after the Effective Date all rights and benefits presently enjoyed by the Lessor with respect to the Leased Property.

10. Additional Condition Precedent. The obligations of Lessee under this Lease are subject to the satisfaction at or prior to the Effective Date that all consents required to assign the Contracts to Lessee shall have been obtained.

11. Compliance with Laws. The Lessee shall, at its expense, materially comply with and conform to all legal requirements placed on the Leased Property during the Term, including all applicable environmental laws; unless the Lessee is contesting the requirement in good faith by appropriate legal proceedings promptly initiated and diligently prosecuted.

12. Maintenance and Repair. The Lessee shall at all times maintain the Leased Property in as good condition as it is in on the date hereof, ordinary wear and tear excepted. The Lessee shall take every other action necessary or appropriate for the preservation and safety of the Leased Property. The Lessee shall promptly make all alterations of every kind and nature, whether foreseen or unforeseen, which may be required to comply with the foregoing requirements of this Paragraph 12 or any authority having jurisdiction over the Lessee or the Leased Property.

13. Indemnification of the Lessor. Subject to the terms of the Cooperation Agreement dated June 15, 1995 between the Lessor and the Lessee, pursuant to which the Lessor has agreed to provide certain services to the Lessee in connection with the operation of the Leased Property (the "Cooperation Agreement"), the Lessee agrees to indemnify and hold the Lessor harmless against and in respect of:

(a) all obligations and liabilities of the Lessee relating to the Leased Premises, whether accrued, absolute, fixed, contingent or otherwise, occurring after the Effective Date of this Lease;

(b) any loss, liability or damage suffered or incurred by the Lessor because of a breach of any obligation of the Lessee incurred under this Lease, or because any representation or warranty by the Lessee contained herein shall be false as of the Effective Date;

(c) all reasonable costs and expenses (including attorney's fees) incurred by the Lessor in connection with any action, suit, proceeding, demand, assessment or judgment for which the Lessor is entitled to indemnification under this Paragraph 13.

14. Indemnification of the Lessee. Subject to the terms of the Cooperation Agreement, the Lessor agrees to indemnify and hold the Lessee harmless against and in respect of:

(a) all obligations and liabilities of the Lessor relating to the Leased Premises, whether accrued, absolute, fixed, contingent or otherwise, occurring before the Effective Date of this Lease;

(b) any loss, liability or damage suffered or incurred by the Lessee because of a breach of any obligation of the Lessor incurred under this Lease, or because any representation or warranty by the Lessor contained herein shall be false as of the Effective Date;

(c) all reasonable costs and expenses (including attorney's fees) incurred by the Lessee in connection with any action, suit, proceeding, demand, assessment or judgment for which the Lessee is entitled to indemnification under this Paragraph 14.

15. Insurance. (a) The Lessee shall maintain the following insurance on or in connection with the Leased Property:

(i) Insurance against loss or damage to the Real Property and the System by fire and other risks from time to time included under standard extended and additional extended coverage policies, including vandalism and malicious mischief, sprinkler, and, to the extent any of the Leased Property is in a flood zone, flood insurance in amounts not less than the actual replacement value of the Real Property and the System, excluding footings and foundations and other parts of the Real Property which are not insurable (or, in the case of plate

glass insurance, the replacement cost of all plate glass in the Leased Property). Such policies shall contain replacement cost endorsements.

(ii) General public liability insurance against claims for bodily injury, death or property damage occurring on, in or about any of the Leased Property, in an amount not less than \$1,000,000 for bodily injury or death to any one person, not less than \$1,000,000 for bodily injury or death in any one accident, and not less than \$2,000,000 for property damage.

(iii) Worker's compensation insurance covering all persons employed by the Lessee in connection with any work done on or about any of the Leased Property for which claims for death or bodily injury could be asserted against the Lessor, the Lessee or any of the Leased Property or, in lieu of such worker's compensation insurance, a program of self-insurance complying with the rules, regulations and requirements of the appropriate agency of the Commonwealth of Pennsylvania.

(iv) Such other insurance on or in connection with any of the Leased Property as the Lessor may reasonably require, which at the time is commonly obtained in connection with properties similar to the Leased Property.

16. Casualty. If any casualty occurs, the Lessee shall give the Lessor immediate notice thereof. The Lessee is hereby authorized to adjust, collect and compromise, in its discretion and upon notice to the Lessor, all claims under any of the insurance policies required by Paragraph 15 and to execute and deliver on behalf of the Lessor all necessary proofs of loss, receipts, vouchers and releases.

17. Events of Default and Remedies.

(a) If any one or more of the following events (an "Event of Default") shall happen:

(i) Failure by the Lessee to make due and punctual payments of all or any portion of the Rent as and when the same shall be due and payable as provided in other provisions of this Lease and such failure shall continue for ten (10) days after receipt of notice thereof from the Lessor to the Lessee; or

(ii) Failure by the Lessee to materially perform and comply with any of the other agreements, terms, covenants, or conditions of this Lease within a period of thirty (30) days after notice from the Lessor to the Lessee specifying that such items are in default; provided that, if such failure is not susceptible of being cured with due diligence within such thirty (30) day period, the time allowed the Lessee to cure such failure shall be extended for such period as may be reasonably necessary so long as the Lessee promptly makes all efforts to complete such cure with all due diligence; provided, further, that if such failure shall subject the Leased Property to any risk of seizure, foreclosure, forfeiture or shall subject the Lessor to

any risk of default under any other leases, mortgages or agreements of which the Lessee has been given notice or of criminal prosecution, the time allowed hereunder for curing such failure shall immediately and without further notice cease notwithstanding anything to the contrary contained in this Lease; or

(iii) The Lessee shall make a general assignment for the benefit of creditors; or

(iv) The Lessee shall file any voluntary petition in bankruptcy or an involuntary petition shall be filed by the creditors of the Lessee, which involuntary petition shall remain undischarged for a period of ninety (90) days; or

(v) A receiver shall be employed or appointed to take possession of substantially all of the assets of the Lessee, which receivership shall remain undissolved for a period of ninety (90) business days after creation thereof; or

(vi) The Lessee shall admit in writing its inability to pay its debts as they become due, or the Lessee shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or the Lessee shall file an answer admitting or failing timely to contest a material allegation of a petition filed against the Lessee in any such proceeding or, within sixty (60) days after the commencement of any proceeding against the Lessee seeking any reorganization, or arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statutes, law or regulation, such proceeding shall not have been dismissed;

then in any such event, the Lessor shall have all rights or remedies available to the Lessor at law or in equity, including specific performance.

(b) No failure by the Lessor to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach of such agreement, term, covenant or condition. No waiver of any breach shall affect or alter this Paragraph but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

(c) Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Lessor of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Lessor of any or all other rights or

remedies provided for in this Lease or now or hereafter existing in law, in equity, under any statute or otherwise.

18. Miscellaneous.

(a) Survival of Representations. All representations, warranties and agreements made by the Lessor and the Lessee in this Lease or in any exhibit, certificate, document or instrument delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby, and the remedies of the Lessee and the Lessor with respect thereto, shall survive the termination of this Lease for a period of five (5) years.

(b) Waivers and Amendment.

(i) The Lessor or the Lessee may, by written notice to the other may, (i) extend the time for the performance of any of the obligations or other actions of the other; (ii) waive any inaccuracies in the representations or warranties of the other contained in this Lease; (iii) waive compliance with any of the covenants of the other contained in this Lease; and (iv) waive or modify performance of any of the obligations of the other.

(ii) This Lease may be amended, modified or supplemented only by a written instrument executed by all the parties hereto. Except as provided in the preceding sentence, no action taken pursuant to this Lease, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained herein. The waiver by any party hereto of a breach of any provision of this Lease shall not operate or be construed as a waiver of any subsequent breach.

(c) Expenses. Whether or not the transactions contemplated by this Lease are consummated, the Lessee shall be responsible for the fees and expenses of its counsel, accountants, other experts and all other expenses incurred by it incident to the negotiation, preparation and execution of this Lease, and the Lessor shall be responsible for any and all such fees and expenses incurred by it incident to the negotiation, preparation and execution of this Lease and the performance by it of its obligations hereunder.

(d) Occurrences of Conditions Precedent. Each of the parties hereto agrees to use its best efforts to cause all conditions precedent to its obligations under this Lease to be satisfied.

(e) Notices. All notices, requests, demands and other communications which are required or may be given under this Lease shall be in writing and shall be deemed to have been duly given if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid:

(a) If to the Lessor to:
City of Pittsburgh
City County Building

Pittsburgh, PA 15219
Attention: City Solicitor

- (b) If to the Lessee to:
The Pittsburgh Water and Sewer Authority
441 Smithfield Street
Pittsburgh, PA 15222
Attention: Executive Director

or to such other address as any party shall have specified by notice in writing to the other.

(f) Entire Agreement. This Lease and the Exhibits hereto constitute the entire agreement between the Lessee and the Lessor with respect to the subject matter hereof.

(g) Binding Effect; Benefits. This Lease shall inure to the benefit of and be binding upon the parties hereto and their successors; nothing in this Lease, expressed or implied, is intended to confer on any other person other than the parties hereto, or their successors, any rights, remedies, obligations or liabilities under or by reason of this Lease.

(h) Non-assignability. This Lease and any rights pursuant hereto shall not be assignable by either party without the prior written consent of the other and any assignment in violation hereof shall be null and void and of no force and effect.

(i) Applicable Law. This Lease and the legal relations between the parties hereto shall be governed by and in accordance with the laws of the Commonwealth of Pennsylvania.

(j) Section and Other Headings. The section and other headings contained in this Lease are for reference purposes only and shall not affect the meaning or interpretation of this Lease.

(k) Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

(l) Recordation. Lessor and Lessee agree to execute contemporaneously herewith a Memorandum of Lease for recordation in the Office of the Recorder of Deeds of Allegheny County, Pennsylvania, in lieu of this Lease.

(m) Further Assurances. The parties hereto each agree to execute, make, acknowledge and deliver such instruments, agreements, assignments, other instruments of title and conveyances and other assurances and documents as may be required to effectuate the purposes of this Capital Lease Agreement and to consummate the transactions contemplated hereby.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed and delivered this Lease as of the date first above written.

ATTEST:

Koran A. Nunn
Secretary Treasurer

THE PITTSBURGH WATER AND
SEWER AUTHORITY

By: *Joseph P. Patton Jr*
Chairman

ATTEST:

M. Linda Langewere
Secretary to the Mayor

CITY OF PITTSBURGH

By: *F. M. G.*
Mayor

Approved as to Form:

Suzanne Moraw
City Solicitor

Countersigned:

By: *Tom Roberts*
City Controller

Approved as to form:
D. M. McComey & Chilcote, P.C.,
Solicitor to the Controller
City of Pittsburgh

Thomas J. Roberts

EXHIBITS

- A. Leased Property and Contracts.
- B. Excluded Assets
- C. Description of certain recent changes or events affecting the Lessor.
- D. Description of liens, security interests and encumbrances on property.
- E. Description of litigation involving the Leased Property.
- F. List of approvals, authorizations, consents, licenses and permits required in connection with the operation of the business.
- G. Environmental Matters.
- H. Description of litigation against the Lessee.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017951 (water)
	:		C-2020-3019348
v.	:		C-2020-3019305
	:		
Pittsburgh Water and Sewer Authority - Water	:		
	:		
Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017970 (wastewater)
	:		C-2020-3019349
v.	:		C-2020-3019302
	:		
Pittsburgh Water and Sewer Authority - Wastewater	:		
	:		
Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to Authorize the Pay-As-You-Go Method of Financing	:	Docket Nos.	P-2020-3019019
	:		
	:		
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	:		
	:		

**TESTIMONY AND EXHIBITS OF THE
CITY OF PITTSBURGH**

City of Pittsburgh Statement No. 1	Direct Testimony, Daniel Gilman Ex. DG-1 1995 Cooperation Agreement Ex. DG-2 1995 Capital Lease Agreement
City of Pittsburgh Statement No. 2	Direct Testimony, Howard Woods, Jr., PE

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

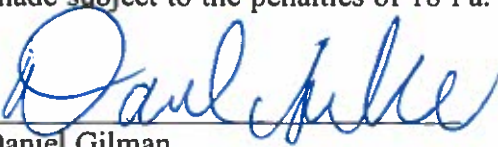
Pennsylvania Public Utility Commission : Docket Nos. R-2020-3017951 (water)
: C-2020-3019348
v. : C-2020-3019305
:
Pittsburgh Water and Sewer Authority - :
Water :

Pennsylvania Public Utility Commission : Docket Nos. R-2020-3017970 (wastewater)
: C-2020-3019349
v. : C-2020-3019302
:
Pittsburgh Water and Sewer Authority - :
Wastewater :

Petition of The Pittsburgh Water and : Docket Nos. P-2020-3019019
Sewer Authority for Waiver of Provisions :
of Act 11 to Increase the DSIC CAP, to :
Permit Levelization of DSIC Charges, and :
to Authorize the Pay-As-You-Go Method :
of Financing :

**VERIFICATION STATEMENT OF DANIEL GILMAN,
CHIEF OF STAFF TO MAYOR WILLIAM PEDUTO
ON BEHALF OF THE CITY OF PITTSBURGH**

I, Daniel Gilman, on behalf of the City of Pittsburgh, hereby verify that the documents preliminarily identified as The City of Pittsburgh's Statement No. 1, The City of Pittsburgh Exhibit DG-1 and The City of Pittsburgh Exhibit DG-2 were prepared by me or under my direct supervision and control. Furthermore, the facts contained therein are true and correct to the best of my knowledge, information and belief and I expect to be able to prove the same at an Evidentiary Hearing in this matter. This Verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Daniel Gilman
Chief of Staff to the Honorable Bill Peduto
Mayor of the City of Pittsburgh

DATED: September 21, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

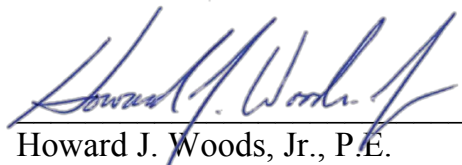
Pennsylvania Public Utility Commission, <i>et al.</i>	:	R-2020-3017951
	:	C-2020-3019348
v.	:	C-2020-3019305
	:	
Pittsburgh Water and Sewer Authority - Water	:	

Pennsylvania Public Utility Commission, <i>et al.</i>	:	R-2020-3017970
	:	C-2020-3019349
	:	C-2020-3019302
v.	:	
	:	
Pittsburgh Water and Sewer Authority - Wastewater:	:	

Petition of Pittsburgh Water and Sewer Authority	:	P-2020-3019019
For Waiver of Provisions of Act 11 to Increase	:	
The DSIC CAP, to Permit Levelization of DSIC	:	
Charges, and to Authorize the Pay-As-You-Go	:	
Method of Financing	:	

**VERIFICATION OF
HOWARD J. WOODS, JR., P.E. FOR THE
CITY OF PITTSBURGH**

I, Howard J. Woods, Jr., P.E., on behalf of the City of Pittsburgh, hereby verify that the documents preliminarily identified as City of Pittsburgh Statement No. 2 was prepared by me or under my direct supervision and control. Furthermore, the facts contained therein are true and correct to the best of my knowledge, information and belief and I expect to be able to prove the same at an Evidentiary Hearing in this matter. This Verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Howard J. Woods, Jr., P.E.
Consultant for the
City of Pittsburgh

Dated: September 21, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
September 23, 2020
Page 2

A copy of this letter is being served on ALJ Mary Long and ALJ Emily DeVoe as well as all parties of record as listed on the certificate of service. If you have any questions, please contact me.

Very truly yours,

/s/ Kevin J. McKeon

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for The City of Pittsburgh

KJM/das
Enclosures

cc: Honorable Mary D. Long
(letter and certificate of service only by email malong@pa.gov)
Honorable Emily I. DeVoe
(letter and certificate of service only by email edevoe@pa.gov)
Yvonne S. Hilton, City Solicitor (yvonne.hilton@pittsburghpa.gov)
John F. Doherty, Associate City Solicitor (john.doherty@pittsburghpa.gov)
Lawrence H. Baumiller, Assistant City Solicitor (lawrence.baumiller@pittsburghpa.gov)
Per Certificate of Service (letter and certificate of service only)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the persons listed below in accordance with the requirements of § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL ONLY

Sharon Webb, Esq.
Erin K. Fure, Esq.
Office of Small Business Advocate
Forum Place Building
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
swebb@pa.gov
efure@pa.gov
dasmus@pa.gov

Christine Maloni Hoover, Esq.
Erin L. Gannon, Esq.
Lauren E. Guerra, Esq.
Santo G. Spataro, Esq.
Office of Consumer Advocate
555 Walnut St., 5th Fl.,
Forum Place
Harrisburg, PA 17101-1923
choover@paoca.org
egannon@paoca.org
lguerra@paoca.org
sspataro@paoca.org

Gina L. Miller, Esq.
John M. Coogan, Esq.
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
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Harrisburg, PA 17120
ginmiller@pa.gov
jcoogan@pa.gov

Ria Pereira, Esq.
Elizabeth R. Marx, Esq.
John W. Sweet, Esq.
The Pennsylvania Utility Law Project
118 Locust St.
Harrisburg, PA 17101
pulp@palegalaid.net

Deanne M. O'Dell, Esq.
Daniel Clearfield, Esq.
Karen O. Moury, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street 8th Floor
Harrisburg, PA 17101
dodell@eckertseamans.com
dclearfield@eckertseamans.com

/s/ Kevin J. McKeon

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder

DATED: September 23, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017951 (water)
	:		C-2020-3019348
v.	:		C-2020-3019305
	:		
Pittsburgh Water and Sewer Authority - Water	:		
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	:		
Pittsburgh Water and Sewer Authority - Wastewater	:		
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Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to Authorize the Pay-As-You-Go Method of Financing	:	Docket Nos.	P-2020-3019019
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**DIRECT TESTIMONY
OF DANIEL GILMAN,
CHIEF OF STAFF TO MAYOR WILLIAM PEDUTO
ON BEHALF OF THE CITY OF PITTSBURGH**

1 **Q. Please state your name and current employment.**

2 A. I am Daniel Gilman, Chief of Staff to the Honorable Bill Peduto, Mayor of the City of
3 Pittsburgh (City).

4
5 **Q. Please describe your educational background and work experience.**

6 A. I am a 2004 graduate of Carnegie Mellon University, where my major was Ethics, History
7 & Public Policy. I have been involved in Pittsburgh city government since, first as a staffer
8 for then-Councilman Peduto who represented Pittsburgh's District 8 (Oakland, Point
9 Breeze, Shadyside, and Squirrel Hill), then as his chief of staff until he was elected Mayor
10 in 2013. In that same municipal election, I was elected to fill Councilman Peduto's vacated
11 City Council seat. I was reelected in 2017, but resigned, effective January 3, 2018, to accept
12 my present position as Mayor Peduto's Chief of Staff.

13
14 **Q. Please describe your responsibilities as the Mayor's Chief of Staff.**

15 A. I work with the Mayor to implement his vision for the City, which means I have
16 responsibility for the oversight of the leadership and operations of all City departments and
17 responsibility for major projects and policy initiatives that the City undertakes or that affect
18 the City. For example, during 2019, a major issue for the City was the renegotiation of the
19 City's 1995 Cooperation Agreement with the Pittsburgh Water and Sewer Authority
20 (PWSA) that the 2017 amendments to the Public Utility Code necessitated that gave the
21 Pennsylvania Public Utility Commission (PUC) jurisdiction over PWSA's rates and
22 service. On behalf of the City, I negotiated the 2019 Cooperation Agreement with PWSA
23 representatives. At this writing, I spend most of my time managing the City's efforts to

1 deal with the COVID-19 pandemic.

2

3 **Q. Why did the City renegotiate the 1995 Cooperation Agreement?**

4 A. The City and PWSA understood that PUC jurisdiction and new regulatory responsibilities
5 affected aspects of the 1995 Capital Lease Agreement and the 1995 Cooperation
6 Agreement. Therefore, they had to revisit these agreements because of the new regulatory
7 responsibilities. For example, the 2019 Cooperation Agreement recognizes PWSA, an
8 independent municipal authority, is transitioning from a municipal authority that was not
9 subject to the PUC's authority and oversight to a municipal authority that is subject to the
10 PUC's authority and oversight, assuming an identity that is more akin to a traditional public
11 utility rather than an independent authority. On the other hand, the City, the owner of the
12 water and sewer system, is transitioning from its ownership position—allowing it
13 unfettered access to *its* water and sewer system—to become a customer, paying a public
14 utility for its access to water and sewer services.

15

16 **Q. Why was renegotiation of the 1995 Cooperation Agreement a major issue for the**
17 **City?**

18 A. The City and PWSA negotiated the 2019 Cooperation Agreement, in part, to balance the
19 significant change, understanding each party must take specific positions: one to protect its
20 customers and the other to protect its residents. As the majority of PWSA's customers are
21 City taxpayers, they will eventually bear the economic burden in one form or another (i.e.,
22 higher rates or higher taxes). For the City, it had to consider the fiscal consequences of the
23 new arrangement because it would have a direct impact on the City's operating budget.

1 The City is not a private business. It cannot simply shift its resources to the cost and
2 expense of water and sewer services. The City had to consider its overall budget, providing
3 all necessary services to protect the general health and welfare of our residents, particularly
4 those who have low income or who are otherwise underserved and therefore, rely upon the
5 City to provide these necessities. It had to add the additional cost of water and sewer
6 services into its budget in a manner that would not jeopardize the other necessary services,
7 including the employment of City workers to provide those services. The 2019
8 Cooperation Agreement recognized the transitions in the relationship, allowing each party
9 the opportunity to implement these significant changes in a reasonable period of time to
10 benefit the taxpayers and ratepayers, respectively, recognizing the budgetary impact to both
11 PWSA and the City, respectively.

12
13 **Q. Please provide an overview of the general goals of the renegotiation.**

14 **A.** We start from the premise that the 1995 Cooperation Agreement and the 1995 Capital
15 Lease Agreement must be read together. The City and PWSA have always viewed these
16 Agreements as part of a unified, single package. These Agreements memorialize
17 negotiated commitments between the City and PWSA. The City wanted to accomplish the
18 2019 transition in a manner that, where possible, is as consistent as possible with the 1995
19 Cooperation Agreement and the 1995 Capital Lease Agreement, which provide PWSA
20 with the option to purchase the water and sewer system in 2025. Overall, the City entered
21 the negotiation with the goal of protecting the public’s best interest. The City—and
22 PWSA—wanted an agreement that would over time be fair to the residents/customers
23 residing within the City of Pittsburgh – the individuals who are PWSA ratepayers *and* City

1 taxpayers.

2 We, the City and PWSA, also wanted an agreement that would be fair to the City, the owner
3 who would pay for water and sewer service, and PWSA, the party assuming the duty, and
4 now, the mission to provide quality water service and sewer transmission service,
5 consistent with the public's best interest. For example, we wanted the new agreement to
6 confirm PWSA's current day-to-day control and its future ownership (circa 2025) of the
7 water and sewer transmission facilities and the services that support those facilities.

8 The City, and presumably PWSA, recognized that, pursuant to their current positions and
9 until such point in time where PWSA assumes full ownership of the water and sewer
10 system, it had to consider Pennsylvania law. For example, exposure to claims for injuries
11 and damages. The City and PWSA are municipal entities, political subdivisions, that
12 receive a certain grant of general immunity, subject to limited exceptions to that immunity.
13 One of these exceptions includes claims and suits arising from alleged dangerous
14 conditions of the facilities of sewer and water owned by a local agency and located within
15 its rights-of-way. Until such time that PWSA assumes full ownership of the water and
16 sewer transmission facilities, the City remains open to claims and lawsuits because neither
17 the City nor PWSA can expand or restrict the legislative grant of immunity or the
18 exceptions to the general grant of immunity in a manner that is inconsistent with the law.
19 Therefore, the City considered its exposure to liability and awards/damages as an element
20 of the overall discussion.

21 Further, we understood, considered, and included in the negotiation additional factors, such
22 as the up-front rental payment PWSA paid to the City; the annual allotment of water to the

1 City for its use, which is actually a use that benefits our taxpayers/PWSA's customers; and
2 compensation for services the City provides to/for PWSA for items, such as pension
3 benefits paid to certain PWSA employees, who transitioned to PWSA employment, and
4 street cleaning, which is performed by City employees with City equipment, saving PWSA
5 capital and budgetary expenses.

6
7 **Q. What is the purpose of your testimony in this proceeding?**

8 A. My testimony will give the City's perspective on the past and future relationship between
9 the City and PWSA, providing important context for the PUC's consideration of the 2019
10 Cooperation Agreement; an explanation for key provisions in the 2019 Cooperation
11 Agreement; and the facts concerning the disastrous consequences for the City and its
12 residents if the PUC modifies the terms of the 2019 Cooperation Agreement in a way that
13 disrupts the careful balance of interests and mutual benefits it achieves, not only with
14 respect to transitional provisions that mitigate rate shock by phasing in changes that require
15 the City to pay for services PWSA previously provided "free of charge" but are actually a
16 form of consideration under the 1995 Cooperation Agreement and Capital Lease
17 Agreement, but also with respect to the valuable services each provides the other. In short,
18 the negotiated agreement benefits all by the synergies it provides.

19
20 **Q. Have you reviewed the direct testimony of PWSA Chief Corporate Counsel and Chief
21 of Administration Debbie M. Lestitian, PWSA Statement No. 1 filed in this
22 proceeding on June 5, 2020?**

23 A. I have, and I am in general agreement with her comments. In particular, I agree with her

1 that the provisions of the 2019 Cooperation Agreement are just and reasonable given the
2 historical relationship between the City and PWSA and the fact that the City will continue
3 to own the assets it leases to PWSA until 2025, and that the Agreement is a "logical next
4 step toward a more traditional utility-customer relationship between PWSA and the City."
5 PWSA Statement No. 1 at 11:19-20. The Agreement embodies gives and takes on both
6 sides that, as she says and I know well, are the "product of months of negotiations."
7

8 *1. Relationship Between the City and PWSA*

9 **Q. Please briefly describe the historical relationship between the City and PWSA.**

10 A. The City has been responsible for providing water service to its residents for over two
11 centuries. Over the many years, before the City established PWSA in 1984, the City built
12 a system of pumping stations, reservoirs, pretreatment plants, filtration plants, and
13 distribution mains to provide water to City residents, to municipally owned buildings, and
14 City instrumentalities, such as the Pittsburgh Zoo. In the 1880s, the City began
15 constructing a municipal sewer system, which collected sewage throughout the City. After
16 World War II, Allegheny County established the Allegheny County Sanitary Authority
17 (ALCOSAN), which commenced county-wide sewage treatment in 1959.

18 In 1984, the City created PWSA, under the Municipality Authorities Act of 1945, primarily
19 to oversee a capital improvement program to refurbish the water system's infrastructure.
20 The City and PWSA entered into a 1984 Lease and Management Agreement in which the
21 City leased to PWSA the City's existing water and sewer systems, transferred financial
22 responsibility for operating and maintenance for the systems to PWSA, and established the
23 City as agent for PWSA to continue providing all services needed to operate the water and

1 sewer systems, with PWSA reimbursing the City for all expenses actually incurred and
2 expended by the City.

3 In 1995, the City and PWSA modified this arrangement, replacing the 1984 Lease and
4 Management Agreement with the 1995 Cooperation Agreement and the concurrent 1995
5 Capital Lease Agreement. Together, the 1995 agreements ended the agency relationship
6 in which City employees were responsible for day-to-day operations of the facilities and
7 transferred operational control of the water and sewer systems to PWSA. Most of the City
8 employees then responsible for day-to-day operations of the facilities became PWSA
9 employees. The 1995 agreements created an arrangement in which PWSA paid the City a
10 front-end loaded rental fee of \$96,017,249.60 for the 30 year lease of the water and sewer
11 systems; granted the City the right to receive up to 600,000,000 gallons of water each year
12 until 2035 to be used by the City, its departments, agencies, and instrumentalities (i.e.,
13 Pittsburgh Zoo, Phipps Conservatory, National Aviary in Pittsburgh, and Schenley Golf
14 Course); and allowed reimbursements for any remaining "actual direct expenses" the City
15 incurred on behalf of PWSA. In exchange, PWSA received possession of the water and
16 sewer systems and related facilities and the right to purchase the water and sewer systems
17 outright for \$1 on September 1, 2025, and the ability to utilize existing City infrastructure
18 and manpower to procure necessary services the City was already geared up to provide to
19 itself, such as specified engineering, communications, vehicle maintenance, legal,
20 information, and financial services, on a fee for services basis, so as to avoid PWSA's less
21 efficient procurement of those services either in-house or from third parties.

1 **Q. Can you identify and describe the documents marked as Exhibits DG-1 and DG-2?**

2 A. Yes. Exhibit DG-1 is the 1995 Cooperation Agreement. Exhibit DG-2 is the 1995 Capital
3 Lease Agreement.

4
5 **Q. Was the \$96 million dollar up-front rental fee charged in the 1995 Capital Lease**
6 **Agreement based on a valuation of the City's water and sewer facilities?**

7 A. To be clear, the total rental fee was approximately \$101.4 million, but PWSA took
8 advantage of discounts for prepayments, reducing the amount paid to about \$96 million.
9 To my knowledge, the payment, which effectively will operate as the purchase price given
10 the agreement's 2025 sale for \$1, was a negotiated price based more on the amount the
11 City needed to ease financial difficulties the City faced in 1995 than the actual value of the
12 water and sewer facilities transferred. Critics of the Capital Lease/Cooperation agreement
13 package at the time who favored privatization of the water and sewer systems maintained
14 that the transferred facilities were actually worth up to more than double the amount PWSA
15 actually paid. The Allegheny Institute for Public Policy, for example, authored a 1995
16 study that concluded "[b]ased on discount cash flow techniques used in free market
17 transactions" that the systems had an "intrinsic valuation of \$152.3 to \$211 million."¹ That
18 financial analysis squares with City witness Woods' observation, based on net book asset
19 value rather than cash flow, that in 1995 the book value less depreciation of the water and
20 sewer system assets was \$172,456,000. City of Pittsburgh's Statement No. 2 at 8:14-9:2.

21

¹ McDonald and Hagan, "A Financial Valuation of the Pittsburgh Water and Sewers System," Allegheny Institute Report #95-04 September 1995. https://www.alleghenyinstitute.org/wp-content/uploads/components/com_reports/uploads/95_04.pdf

1 **Q. What in your view is the significance of the fact that the rental payment under the**
2 **Capital Lease Agreement undervalued the assets leased to PWSA?**

3 A. It confirms what is obvious from a review of the 1995 Cooperation Agreement and the
4 1995 Capital Lease Agreement; they are part of the same transaction, which transitioned
5 the City's relationship with PWSA from one in which the City continued to perform the
6 actual operations of the water and sewer systems as agent for PWSA, to one in which
7 PWSA itself operated the systems and would own them outright after expiration of the
8 Capital Lease Agreement in 2025. Consideration to the City for that transfer of assets came
9 in the form of both the rental payment in the Capital Lease Agreement and the obligations
10 to the City PWSA undertook in the 1995 Cooperation Agreement, including the
11 commitment to provide the City with up to 600,000,000 gallons of water annually free of
12 charge for the City's use.

13
14 **Q. Are there other indicators that the two 1995 agreements must be read together?**

15 A. Yes. For example, when then-Mayor Murphy proposed to Pittsburgh City Council in April
16 1995 to make PWSA "a fully operating authority" by terminating the existing 1984 Lease
17 and Management Agreement between the City and PWSA, he did so in the form of two
18 simultaneously proposed resolutions, one to adopt the 1995 Cooperation Agreement and
19 the other to adopt the 1995 Capital Lease Agreement. The two agreements thus were
20 viewed as a package from their inception and have been described that way since, including
21 in PWSA's bond offering documents.²

² See, e.g., 2008 PWSA Bond Offering Official Statement at A-2 ("Concurrently with entering into the Capital Lease Agreement, the City and the Authority entered into a Cooperation Agreement...").
https://apps.pittsburghpa.gov/pwsa/2008_Final_OS_B_C_D-2.pdf

1 **Q. Given this history, what has been the City's perspective on PWSA's commitment in**
2 **the 1995 Cooperation Agreement to provide the City with up to 600,000,000 gallons**
3 **of water annually free of charge for the City's use through that Agreement's 40 year**
4 **term?**

5 A. The City's perspective has been that the no-charge water allotment was part of the
6 consideration for the 1995 lease and sale of assets, consistent with the reality that pre-
7 PWSA the City historically supplied its own water usage from the facilities it owned and
8 operated without rendering a bill to itself, and consistent with the fact that the City will
9 continue to own the PWSA assets through September 1, 2025. I would sum it up by saying
10 that the no-charge water allotment was an integral part of the 1995 deal and that without
11 the 1995 Cooperation Agreement there would have been no 1995 Capital Lease
12 Agreement.

13
14 **Q. Has the City changed its view concerning its entitlement to the water allotment?**

15 A. With the 2017 legislation subjecting PWSA to PUC regulation, and the lead remediation
16 and other infrastructure improvement challenges that the City on its own initiative
17 promoted to best position PWSA to meet successfully for the benefit of all Pittsburghers,
18 the City recognized that its relationship with PWSA would need to evolve, the 1995
19 Cooperation would need to be renegotiated, and the City would need to begin to pay a
20 reasonable rate for water usage at City-owned and affiliated properties and take other steps
21 to assure that the future relationship between the City and PWSA will be more arm's length
22 than in the past. I took that view with me into the negotiations with PWSA that culminated
23 in the 2019 Cooperation Agreement, and I believe the 2019 Cooperation Agreement as

1 executed fairly implements that result. On the issue of the water allotment, it implements
2 an end to free usage by the City, requires metering of all City properties, and immediately
3 imposes a payment obligation on the City, while mitigating the impact of the full expense
4 by phasing in responsibility over a 4 year period (20%/40%/60%/80%/100%) so that by
5 the fifth year, 2024, the City will pay 100% of the usage charges PWSA is permitted to
6 impose. We used a similar phase-in approach to other changes introduced in the 2019
7 Cooperation Agreement, to the benefit of both the City and PWSA, and, more important,
8 to Pittsburgh residents who are both taxpayers and ratepayers.

9
10 2. Key Provisions of the 2019 Cooperation Agreement

11 **Q. Please enumerate the key provisions in the 2019 Cooperation Agreement that you**
12 **negotiated with PWSA.**

13 A. My negotiations centered on Sections 3.1 and 3.2 (services to be provided between the City
14 and PWSA); 5.1 and 5.2 (water and sewer lines to and within City properties); 6.1 (subsidy
15 payments for City residents Pennsylvania American Water Company serves); 6.2 (water to
16 City and fire hydrant charges); 8 (City payroll tax) and 9 (PURTA tax); and 15 (relationship
17 between PWSA and the City). Most of the other provisions in the 2019 Cooperation
18 Agreement were carried over with minor modifications from the 1995 Cooperation
19 Agreement. The animating principle in all of these provisions was to create a sensible
20 division of cost and responsibility with respect to the provision of water and sewer service
21 to City residents that is fair to City taxpayers and fair to PWSA ratepayers based on the
22 history of the relationship, the existing sunk costs of each, and the respective capabilities
23 of the City and PWSA.

1 **Q. Of these, which are the most critical to the City?**

2 A. All are important, even the provisions that are objectively unfavorable to the City, because
3 the Agreement is the result of a careful balancing of interests that the City and PWSA each
4 brought to the negotiation, and the undoing of one upsets the balance among all that the
5 parties agreed to after long hours of negotiation. That said, the City is most interested in
6 preserving 6.2, which commits the City to paying 100% of the water and sewer charges
7 PWSA's PUC-approved tariffs levy on the City, but phases in that obligation over the
8 period 2020-2024 on the percentage basis I described. The City faces dire economic and
9 budgetary obstacles if the PUC rejects the Section 6.2 phase-in approach and requires the
10 City to pay those charges at the 100% level immediately.

11
12 **Q. Please address Sections 3.1 and 3.2 (services to be provided between the City and**
13 **PWSA).**

14 A. In these sections, the City and PWSA agreed to provide each other with services as needed
15 and requested based on "Actual Direct Expenses," defined in the Agreement to mean
16 identifiable and documented direct costs. For services the City may provide PWSA, PWSA
17 can benefit from the fact that, for example, the City already maintains and fuels a vehicle
18 fleet for a variety of purposes; there is no need for PWSA to go to the expense of
19 duplicating those support services for its vehicles. Of note is the provision in Section 3.1
20 that the City will provide the street sweeping services that both the City and PWSA need
21 to do, and bill PWSA for half the cost. The City already provides street sweeping as part
22 of its municipal services; PWSA is required to do it as part of its required stormwater
23 management environmental obligations. It makes practical and economic sense for both

1 parties that the City perform the function and split the cost 50/50 with PWSA.

2
3 **Q. Please address Sections 5.1 and 5.2 (water and sewer lines to and within City**
4 **properties).**

5 A. Section 5.2 recognizes that PWSA's commercial customers other than the City presently
6 are responsible for the operation, maintenance, repair, and replacement of the water and
7 sewer service laterals that serve their premises, whereas PWSA presently assumes that
8 obligation for City-owned properties and gradually transitions that expense to the City so
9 that by 2024 the City will be treated for this purpose like all other commercial customers.
10 The transition approach method here is similar to the 2020-2024 gradual phase-in approach
11 (20%/40%/60%/80%/100%) we agreed on for the city's obligation to pay for water usage,
12 but instead begins in 2021 and ends in 2025. The only exception to the City assuming
13 responsibility for service laterals to its own properties is with service laterals in City parks
14 larger than 50 acres, where the responsibility will remain with PWSA, including
15 responsibility for the installation of meters and meter vaults. In exchange, the City has
16 agreed in Section 5.2 to PWSA's practice for other customers to share 50% of the cost of
17 meter and meter vault installation, even though the PUC's regulations set the general
18 expectation that the utility, in this case PWSA, will bear such costs alone.

19
20 **Q. Please address Section 6.1 (subsidy payments for City residents Pennsylvania**
21 **American Water Company serves).**

22 A. Pennsylvania American Water Company (PAWC) serves certain sections of the City rather
23 than PWSA, and until recently, PAWC charged higher rates. The City, and then PWSA,

1 subsidized the difference so that all City residents were billed only the equivalent of
2 PWSA's lower rates. Section 6.1 addresses the City's agreement with PWSA as part of the
3 give and take negotiation of the 2019 Cooperation Agreement to assume responsibility for
4 that subsidy payment. As it happens, there no longer is a need for the subsidy because
5 PAWC's rates are no longer higher than PWSA's rates, so this provision is no longer
6 operative.

7
8 **Q. Please address Section 6.2 (water to City and fire hydrant charges).**

9 A. I have already alluded to the gist of, and the importance of, this section in previous
10 comments. For the City, this provision is the part of the 2019 Cooperation Agreement that
11 represents the biggest "give" by the City, because the no cost water allotment was integral
12 to the 1995 Capital Lease Agreement and Cooperation Agreement that transferred
13 possession and control of the City's water and sewer systems to PWSA. Retention of
14 Section 6.2 is critical to the City's economic well-being. It implements an end to the City's
15 free usage, requires metering of all City properties, and immediately imposes a payment
16 obligation on the City, while mitigating the impact of the full expense by phasing in
17 responsibility over a 4 year period (20%/40%/60%/80%/100%), so that by the fifth year,
18 2024, the City will pay 100% of the usage charges PWSA is permitted to impose. I note
19 that the City has agreed to this schedule and the obligation to pay for its usage at the 100%
20 level as of January 1, 2024, at a time when the City will still own the water and sewer
21 assets, and almost two years before PWSA can acquire them under the 1995 Agreements.
22 Inexplicably, the PUC has indicated in recent orders that it will reject this central provision
23 of the 2019 Cooperation Agreement and order the City's full payment for usage as of

1 October 3, 2019.³

2
3 **Q. If the PUC rejects Section 6.2 of the 2019 Cooperation Agreement what would be the**
4 **effect on the City?**

5 A. If the PUC rejects Section 6.2, as the PUC has indicated it intends to do, it would, in the
6 City's view, gut the 2019 Cooperation Agreement, upend the City's fiscal plans, and
7 expose the most vulnerable City residents to the brunt of unavoidable budget cuts, all at a
8 time when the City has recently emerged from Act 47 "financially distressed" status and
9 now is in the throes of dealing with the revenue shortfalls associated with the effects of the
10 COVID-19 pandemic. I will address these issues in more detail later in my testimony.

11
12 **Q. Please address Section 8 (City payroll tax) and Section 9 (PURTA tax).**

13 A. Throughout the negotiations between the City and PWSA, PWSA's mantra was that it
14 should be treated in the way the City interacts with any other public utility. As the other
15 public utilities that serve the City are required to pay City payroll tax and the PURTA tax,
16 the City proposed, and PWSA agreed as part of the negotiated settlement reflected in the
17 Cooperation Agreement, to pay those taxes. This comports, in my view, with the PUC's
18 requirement that the relationship between the City and PWSA be on a transactional basis.
19 Similar to the 2020-2024 phase-in of other items requiring monetary payment, the PURTA
20 tax payment PWSA pays to the City would receive the same 20/40/60/80/100 phase-in.

21

³ Docket Nos. M-2018-2640802 and M-2018-2640803, March 26, 2020 and June 18, 2020.

1 **Q. Please address Section 15 (relationship between PWSA and the City).**

2 A. This section states expressly what I believe the Agreement accomplishes as a whole: the
3 City agrees that henceforth interactions between the City and PWSA will be on a “business-
4 like, transactional basis,” and PWSA agrees that the City will treat PWSA under the
5 provisions of the Agreement in the way it treats other utilities operating in the City.

6

7 **Q. Do you have any additional comments about the particular provisions of the 2019
8 Cooperation Agreement or your negotiation of it on behalf of the City?**

9 A. I would only reemphasize that the City and PWSA worked long, hard, and in good faith to
10 hammer out the terms of the 2019 Cooperation Agreement, that it represents difficult
11 concessions both sides made, and that it creates a template for moving forward towards a
12 workable separation between the City and PWSA in the manner the legislature sought in
13 the 2017 legislation. I ask on behalf of the City that the PUC approve it in its entirety,
14 notwithstanding previous indications that the PUC may reject its critical phase-in
15 provisions.

16

17 **Q. Apart from the payment phase-in provisions, are there other aspects of the 2019
18 Cooperation Agreement that have a significant economic impact?**

19 A. Yes. Again, the 2019 Cooperation Agreement is a carefully balanced package that must be
20 reviewed and approved as a whole. It provides both economic benefits to the City and to
21 PWSA, consistent with a more transactional approach to the relationship. For example,
22 just as the City now will be paying for water and sewer usage and ALCOSAN charges,
23 PWSA will for the first time be reimbursing the City for pension costs for PWSA

1 employees that participate in the City's pension plan, for permit and license fees, for
2 payroll and PURTA taxes, and for street sweeping. The City and PWSA each need to
3 receive the benefits they bargained for. These are synergies and mutual benefits of
4 cooperating and maximizing cost reduction or control opportunities that benefit both.
5 Stripping any of these features from this carefully negotiated, integrated, and crafted
6 Cooperation Agreement, but assuming other benefits will remain, is bad policy and a bad
7 result that does not collectively benefit the interests of all. The whole idea of a free service
8 not in exchange for other benefits and the reality of who owns the assets along with
9 attendant strings is a fallacy and does not reflect how negotiated solutions to complex
10 problems are achieved by sophisticated parties to an agreement, such as the City and
11 PWSA.

12
13 3. Consequences of Disrupting Phase-in Provisions for Payment for Services

14 **Q. You stated earlier that in entering the negotiations for the 2019 Cooperation**
15 **Agreement, the City was concerned that any changes in the financial arrangements**
16 **between the City and PWSA that could strain the City's budget be phased in**
17 **gradually, and that Section 6.2 of the Agreement accomplishes that goal. Why is the**
18 **agreed-upon gradual phase-in of payment for water and fire hydrant service so**
19 **important to the City?**

20 **A.** As the City came to realize that the 1995 Cooperation Agreement would need to be
21 renegotiated and the no-cost water allotment likely would end, such that the City would be
22 required to pay for its water and sewer usage at City properties, including public buildings,
23 City parks, and that City instrumentalities, such as the Pittsburgh Zoo, Phipps

1 Conservatory, the National Aviary in Pittsburgh, and Schenley Golf Course would be
2 affected, we realized right away that immediate payment at the 100% level was not a
3 realistic possibility. The City was just emerging in early 2018 from a 14-year period (2004-
4 2018) of Act 47 “financially distressed” status. A municipality is placed in Act 47
5 financially distressed status when its fiscal integrity is jeopardized and threatens its ability
6 to provide for the health, safety, and welfare of its citizens. As part of its recovery plan,
7 the City, during this period, had imposed new taxes and raised the rate of existing taxes.
8 During the Act 47 years, the City also implemented deep budget cuts. We knew going into
9 the negotiations with PWSA that it would be extremely difficult to either raise taxes or
10 make further cuts in existing expenditures to accommodate a flash cut to paying 100% of
11 charges for water and sewer services that the City had never in its history paid out-of-
12 pocket to receive.

13
14 **Q. Are the City revenue circumstances any better now than they were when the City and**
15 **PWSA executed the 2019 Cooperation Agreement in October 2019?**

16 A. Present prospects for raising revenue through taxes are, of course, much worse since
17 October 2019 because of the business and entertainment event closures, unemployment,
18 and related economic devastation the COVID-19 pandemic caused that began in March
19 2020. Tax collections from March to May 2020 were down 25% from the comparable
20 period in 2019, and we estimate that revenues for the entirety of 2020 will be down 21%
21 from budget. We do not expect to recover fully from a revenue perspective until 2025. The
22 tax revenues that are most impacted by economic hardship triggered by the pandemic
23 are payroll, parking, earned income, and property taxes; these four taxes alone could see

1 \$97 million in losses just this year. In short, revenues are down and are likely to stay down
2 for the foreseeable future, requiring the City to make hard choices without even considering
3 the quadrupling of water expense that a flash cut to 100% payment for usage would mean.
4 In response to the pandemic-induced revenue drop, the City has already instituted a hiring
5 freeze across all departments and is considering 10% cuts in non-personnel spending across
6 all departments.

7
8 **Q. As far as you can tell, does the I&E positions or the recent Orders entered consider or**
9 **reflect any of this?**

10 A. Not that I can discern. We are very concerned that decisions are being made without the
11 best available investigation and information being presented to the Commission.

12
13 **Q. Where would the City find the revenue to immediately commence paying 100% of**
14 **PWSA's tariff rates for water and sewer services the City uses?**

15 A. The PUC's Bureau of I&E estimates that the value of the City's water usage is \$11.4
16 million. Docket Nos. M-2018-2640802 and M-2018-2640803, March 26, 2020 Order at
17 51-52. Other estimates, such as the one contained in the Pennsylvania Auditor General's
18 2017 audit of PWSA, estimates the bill at least \$6.8 million. *Id.* Recognizing that PWSA
19 has yet to have the PUC approve tariff rates for service to the City, the actual amount the
20 City would be required to pay at the 100% level is unknown. But I can say with certainty
21 that if the City were required immediately to pay PWSA's annual charges at the 100% level
22 in amounts anywhere near or above these estimates, the realistic options for finding the
23 money to do so would be to engage in further City job cuts, cuts in City services, and cuts

1 in discretionary spending. All of these measures would have a disproportionate adverse
2 impact on the City’s lower income residents.

3
4 **Q. Why would lower income City residents be disproportionately affected?**

5 A. Between Act 47 cuts and pandemic-related job cuts, the City has already pared back our
6 work force in many areas. Additional job cuts will have to come from public safety – police,
7 fire, paramedics, and EMTs. These cuts obviously will affect the individuals who will lose
8 employment, but also will affect the City residents they serve. City Police, paramedics, and
9 EMTs tend to be utilized to address medical issues, including hospital transport, more so
10 in low-income areas than in wealthier neighborhoods. Likewise, crime tends to be more of
11 a daily challenge for residents of low-income areas than wealthier areas, and public safety
12 cuts will have a greater impact on those low-income area residents.

13
14 **Q. Are there more concerns that are crucial to public interests and social safety and
15 welfare?**

16 A. Yes, when city services are cut, everyone is affected, but lower income individuals and
17 families with children are disproportionately affected because they are less financially able
18 to fill the void from other sources using their own funds, and thus more dependent on the
19 cut services. Cuts in discretionary spending typically work the same way. For instance:

- 20 • Closure or curtailing of operating hours at senior centers that become “cooling
21 centers” in summer months for needier seniors who lack home air conditioning will
22 disproportionately impact low-income seniors who may lack access to other
23 facilities with air conditioning or other social gathering venues, such as private

- 1 clubs;
- 2 • If the City is required immediately to pay 100% of the bill for water at City
3 swimming pools and splash parks, those facilities relied on disproportionately by
4 lower income residents and their children, will be curtailed or closed, as will low-
5 income residents lack access to privately funded members-only clubs;
 - 6 • Parks are another example. In more affluent neighborhoods, civic groups tend to
7 provide supplemental funding for parks and programs, but City parks in low-
8 income neighborhoods typically lack those outside resources; and
 - 9 • The impact on youth sports and the facilities that they play upon will be significant.
10 For example, youth sports leagues that rely on free City water at concession stands
11 will be affected.

12 So, the short answer is the City will need to cut discretionary services, and inevitably, the
13 poor and underprivileged will feel the brunt of it. I believe the Commission needs to factor
14 these considerations into any decision it makes concerning the transition the City and
15 PWSA are effectuating in the 2019 Cooperation Agreement, just as the City and PWSA
16 have done. To date, it appears to me that the Commission has overlooked, or has not been
17 sufficiently informed of, these hard, factual realities. They should be considered seriously
18 in the context of this proceeding and should prevail over any precise calculations of cost
19 causation or procedural arguments. The PUC is after all organized directly under the
20 Legislature and should have a broader view of all input before it makes a significant
21 decision that affects so many Pennsylvanians.

22

23

1 **Q. How would the gradual phase-in of payment for water and sewer services from 2020**
2 **to 2024, as agreed in the 2019 Cooperation Agreement, materially improve the City's**
3 **prospects for paying the bill and avoiding these negative impacts?**

4 A. The goal is to accommodate the new expense without upending existing budgets and
5 programs and jeopardizing existing obligations. The smaller the new expense to be
6 accommodated, the easier that goal is to achieve. In agreeing to the phase-in as presented
7 in the 2019 Cooperation Agreement, the City believed, and still believes, that the expense
8 can be met through a series of small changes year to year that in combination will increase
9 revenues and decrease expenses. In contrast, the burden of immediately paying 100% of a
10 large and brand-new expense disrupts existing budget projections and necessitates drastic
11 changes.

12
13 **Q. Since City taxpayers are the same population as PWSA ratepayers, does it really**
14 **cause harm if the City immediately moves to paying 100% for its usage, in that City**
15 **residents already are paying for the City's "free" water through PWSA rates that**
16 **would be lower but-for the free water allotment PWSA provides the City?**

17 A. The reality is much more complicated than the question suggests. Moving gradually to
18 100% payment for City usage, as the City has agreed to do in the 2019 Cooperation
19 Agreement rather than immediately as the PUC seems to think necessary, makes a big
20 difference. One reason is that even if there were a perfect match between City taxpayers
21 and PWSA ratepayers, and there is not, inequities would occur with immediate movement
22 to 100% because of timing differences between budget years, tax collection periods, and
23 PWSA rate setting. These timing differences can be smoothed out with the Cooperation

1 Agreement's agreed to four-year phase-in to 100%. More important are the differences in
2 respective taxpayer/ratepayer populations. For example, many low-income individuals
3 and families in the City reside in subsidized housing, where the PWSA customer is the
4 landlord and water is included in the rental payment; an increase in City taxes to enable the
5 City to pay for water immediately at the 100% level will adversely affect the low-income
6 population at many levels, but the City's payment of that revenue to PWSA will not confer
7 any economic benefit on those low-income renters in the form of a reduction in rental
8 payment or otherwise. Likewise, the City's need to cut jobs and services will have
9 immediate adverse effect on this population that may never provide them a benefit as
10 PWSA ratepayers. Another reason is that PWSA provides service to direct and bulk sale
11 customers outside the City, and while PWSA's provision of no-cost water to the City is
12 subsidized by rates those non-City customers pay, those non-City PWSA customers enjoy
13 the benefits of City services and use of City-affiliated entities without paying City taxes.
14 Half of the people who work in the City live in communities outside the City, and they
15 frequent and enjoy City-affiliated entities that presently receive no-cost water service, such
16 as the Pittsburgh Zoo, Phipps Conservatory, the National Aviary in Pittsburgh, and
17 Schenley Golf Course. Raising City taxes to pay for a flash cut to 100% payment for the
18 City and City-affiliated entities' water usage will immediately diminish the quality of life
19 in the City for all who use the City and its amenities, without conferring any immediate
20 benefit. Over time, of course, the proper matching of cost with cost causer for PWSA's
21 water and sewer services may be beneficial to all concerned, but the immediate shift the
22 PUC seems intent on ordering will create only inequity and hardship.

23

- 1 **Q. Does this conclude your direct testimony at this time?**
- 2 A. Yes, and I reserve the right to supplement this testimony as this matter proceeds.

'95 Co-Op Agreement

File No. 209
Bill No. 1823
No. 269 Vol. 129 Page 211

IN COMMITTEE ON PUBLIC WORKS, WATER &
ENVIRONMENTAL SERVICES. Wednesday,
April 10, 1995. Read and held until
Monday, April 10, 1995.

RESOLUTION

Authorizing a Cooperation Agreement and
amendments thereto with the Pittsburgh Water
and Sewer Authority to provide for the creation
of a fully operating authority.

In Council, April 4, 1995, referred

to Committee on Public Works, Water & Environmental Services

Lerida M. Johnson-Wasler
Clerk

In Committee on Public Works, Water & Environmental Services

APR 10 1995 19, ordered to
be returned to Council with an affirmative recom-
mendation.

Lerida M. Johnson-Wasler
Clerk

In Council APR 11 1995

Bill read, and the passed

Lerida M. Johnson-Wasler
Clerk

Presented by

Mr. Ricciardi

No.

269

RESOLUTION

Authorizing a Cooperation Agreement and amendments thereto with the Pittsburgh Water and Sewer Authority to provide for the creation of a fully operating authority.

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1.

The Mayor is hereby authorized to execute, on behalf of the City of Pittsburgh and in final form approved by the City Solicitor, a Cooperation Agreement with the Pittsburgh Water and Sewer Authority (the "Authority") providing for

1. The provision of certain services to the Authority by the City and payment therefore.
2. The recognition of the American Federation of State, County and Municipal Employees, District Council 84, Local 2719 (AFSCME 719); the American Federation of State, County and Municipal Employees, District Council 84, Local 2037 (AFSCME 2037); and the Pittsburgh Joint Collective Bargaining Committee (the "PJCBC") as collective bargaining agent for the employees of the Authority previously employed by the City and members of these unions.
3. The establishment of a coordinated bargaining committee among the City, AFSCME 2719, AFSCME 2037 and the Pittsburgh Water and Sewer Authority for purpose of collective bargaining.

SECTION 2 Any Resolution or Ordinance or part thereof conflicting with the provisions of this Resolution is hereby repealed so far as the same affects this Resolution.

Enacted in Council, this 11th day of April A.D. 19 95

Attest: *Linda M. Johnson Wasen*
Clerk of Council.

[Signature]
President of Council.

Mayor's Office

April 18 19 95

Approved:

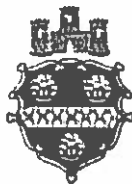
[Signature]
Mayor

Attest: *M. Linda Gangelwere*
Mayor's Secretary.

Recorded in Resolution Book, Vol. 129 Page 211, 24th day of April 19 95

APR 24 1995

EFFECTIVE DATE



City of Pittsburgh
Office of the Mayor

April 3, 1995

APR 3 1995 12:40

President and Members
City Council
City of Pittsburgh

Dear President and Members:

Attached are two resolutions dealing with the Pittsburgh Water and Sewer Authority which support our efforts to make the Authority a fully operating authority.

The first resolution deals with the termination of the management provisions of the existing Lease and Management Agreement dated as of March 1, 1984, between the City and the Authority and the replacement thereof by a Cooperation Agreement redefining the services for which the Authority will rely on the City. The terms of this Agreement with respect to the services to be performed by the City have not changed significantly since you approved Resolution No. 12 of 1995 (approved January 24, 1995) which addressed such a Cooperation Agreement. The form of the documentation, however, has changed.

The second resolution provides for the Authority to acquire control of the Water and Sewer System pursuant to a lease providing for up front, lump sum, all inclusive rent payments and provides that upon expiration of the term of the lease, the Authority will have the option to acquire the water system.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom Murphy".

Tom Murphy

COPY

COOPERATION AGREEMENT

Dated as of the 15th day June, 1995 but effective as of January 1, 1995 (the "Effective Date") between the City of Pittsburgh, a municipal corporation of the Commonwealth of Pennsylvania (the "City") and The Pittsburgh Water and Sewer Authority, a body corporate and politic, organized and existing under the laws of the Commonwealth of Pennsylvania (the "Authority").

WHEREAS, pursuant to a Lease and Management Agreement dated March 29, 1984 (the "Lease"), the Authority and the City provided for (i) the lease of the then existing water and sewer systems (the "System") to the Authority by the City; (ii) the operation and maintenance of the System by the Authority and (iii) the creation of an agency relationship between the Authority and City whereby the City provided services necessary to operate the System as agent of the Authority; and

WHEREAS, the City and the Authority have agreed to (i) provide for the termination of the City's status as an agent for the Authority, and (ii) provide for the provision of certain services to the Authority by the City;

NOW THEREFORE, in consideration of the mutual premises and intending to be legally bound hereby, the parties agree as follows:

I. DEFINITIONS:

"Capital Expenses" shall mean all expenditures made by the Authority or by the City, acting on behalf of the Authority, in carrying out the Construction Project and any Capital Additions to the System except for those hereinafter excluded. These expenditures shall include but not be limited to all engineering expenses whether undertaken by Authority or City employees or subcontracted by the City on behalf of the Authority.

"Actual Direct Expenses" shall mean all expenses directly related to the Authority (i.e., employee medical insurance premiums) and incurred by the City on behalf of the Authority. Expenses in this category are either documented by a third party invoice or specifically identifiable in the City's records. These expenses shall be determined by the City and the Authority on a mutually agree-upon basis. Actual Direct Expenses shall be paid monthly by the Authority to the City.

"Public Works Salaries and Wages" shall mean the apportioned share of Public Works Salaries and Wages directly attributable to the operation and maintenance of the sewer system. Public Works Salaries and Wages shall be paid monthly by the Authority to the City.

"Saw Mill Run Project" shall mean all those capital expenditures necessary to improve the sewer system in the Saw Mill Run Basin as set forth in pages 79 through 81 of the Green International, Inc. Water and Sewer Systems contract with the City dated December 9, 1983.

"Overhead Expenses" shall mean all expenses indirectly related to the Authority (i.e., payroll processing and benefits administration) and incurred by the City in relation to providing materials, services, supplies, etc. to the Authority under the terms of this Agreement. Expenses in this category are not documented by a third party invoice or specifically identifiable in the City's records. Overhead expense rates are to be determined annually by a City indirect cost allocation plan prepared by a certified public accounting firm. Overhead Expenses shall be paid monthly by the Authority to the City.

"System" shall mean all plants and equipment, structures, facilities, lands, easements, rights of way, water lines and sewer lines, patents, copyrights, contracts with municipalities or authorities outside the boundaries of the City, water treatment plants, pumping facilities, reservoirs, storage tanks, distribution mains, service lines and appurtenances, sewers, inlets, manholes, diversion structures, pumping stations, force mains, including but not limited to the assets described in Sections 3.3 and 4.3 of the System Evaluation prepared by Green International, Inc. and dated December 9, 1983, as amended and supplemented, which report is incorporated herein by reference.

II. TERMINATION OF AGENCY RELATIONSHIP:

A. As of the Effective Date the agency relationship between the City and the Authority provided for in the Lease is terminated. The Authority, as of the Effective Date, will assume sole responsibility and prerogative for management and operation of the System and all risks attenuated thereto.

B. As of the Effective Date all positions in the Water Department and certain positions in the Water and Sewer Division of the Department of Engineering and Construction and the Department of Public Works listed on Exhibit A hereto are eliminated from the City of Pittsburgh budget and those positions will be created by the Authority and filled in the manner required by the applicable collective bargaining agreements. City employees in those positions receiving worker's compensation at the time of the elimination of those positions by the City shall be entitled to the same position at the Authority upon their eligibility to return to work if such is within 24 months of their last day of work, all in accord with letters of the Authority dated December 19, 1994, to such employees.

C. The Authority shall recognize the American Federation of State, County and Municipal Employees, District Council 84, Local 2719 (AFSCME 2719); the American Federation of State, County and Municipal Employees, District Council 84, Local 2037 (AFSCME 2037); and the Pittsburgh Joint Collective Bargaining Committee (the "PJCBC") as the collective bargaining agents for the employees of the Authority previously employed by the City and shall negotiate with each of them a collective bargaining agreement that offers such employees wages, benefits and other terms and conditions that are at least equivalent to the terms and conditions offered to City employees for the contract term commencing January 1, 1995.

D. The Authority shall offer non-union employees whose positions are terminated by the City benefits which are at least equivalent to the benefits currently provided by the City and including continuity of participation in the City pension plan. ✓

E. The Authority certifies that it has accepted the provisions of the Workers' Compensation and Occupational Disease Acts, as amended and supplemented, insofar as the performance of any work of the Authority and that it will insure or provide for the insurance of its liability thereunder in accordance with the terms of the acts.

F. The City shall transfer, to the Authority on Effective Date or as soon as practicable thereafter, the documents, equipment, files, maps, records and reference data related to the System, (the "Inventory") acquired by the City for the benefit of the Authority since the effective date of the Lease. All Inventory transferred shall be listed and approved for transfer by the Department of General Services.

G. On a date to be determined by the Authority but not prior to January 1, 1996 and with a minimum of ninety (90) days written notice, the City shall transfer any personnel then assigned to the Water and Sewer Division of the Department of Engineering and Construction or any other City department and assigned to the operation and maintenance of the System as listed on Exhibit B, to the Authority. Any related equipment, files, maps, records and reference data shall also be transferred at that time.

H. All accounts receivable of the Authority, whether previously billed or not by the City, upon collection will be paid to the Authority.

I. As between the City and the Authority, it is understood and agreed that the City will continue to retain responsibility and liability for all Capital Expenses on the Saw Mill Run project and the Authority shall not be responsible for such Capital Expenses.

III. SERVICES TO BE PROVIDED BY THE CITY TO THE AUTHORITY:

A. Subject to the general supervision, direction and control of the Authority in the exercise and discharge of its public duties under the Municipality Authorities Act together with other applicable laws and regulations, the City shall render to the Authority the following services which shall be paid for as provided in Section VII below:

1. Department of Public Works:

The Department of Public Works shall continue to operate and maintain the sewer system portion of the System which is the sewers, inlets, manholes, diversion structures, pumping stations and force mains (the "Sewer System") within the City until such time as that function is transferred to the Authority, pursuant to Section II. G. The services to be provided shall include, but not be limited to, the following:

- (a) TV inspection of sewers.
- (b) Cleaning of sewers, catch basins and manholes.
- (c) Repair of catch basins and manholes.
- (d) Repair and/or replacement of sewers.
- (e) Administration of the Annual Catch Basin/Manhole Contract.
- (f) Administration of the Annual Catch Basin Cleaning Contract.
- (g) Operation and maintenance of diversion chambers and sewage pump stations.
- (h) Investigation of complaints and problems involving sewer system.
- (i) Working with Authority staff in the planning, design and construction phase management of capital improvement projects performed by the Authority.
- (j) Maintaining files, records and maps of the sewer system.
- (k) As long as the Asphalt Plant is owned by the City, furnish asphalt for use on restoration or construction projects performed or contracted by the Authority.
- (l) Any other services as may be agreed upon by the parties.

2. Department of Engineering and Construction:

- (a) Print plans, specifications and contract documents as required by the Authority.
- (b) Perform field survey services as requested by the Authority.
- (c) Any other services as may be agreed upon by the parties.

3. Department of General Services:

- (a) Provide telephone and data services for the Authority.
- (b) Provide radio communication services for the Authority.
- (c) Take and process photos prior to construction for various capital improvement projects as requested by the Authority.

- (d) Provide vehicles, maintenance, service, repairs and insurance as set forth in Article V hereof.
- (e) Furnish fuel and other fluids necessary for Authority vehicles and equipment.
- (f) Any other services as may be agreed upon by the parties.

4. Law Department:

- (a) Represent the Authority in actions against it as requested by the Authority.
- (b) Provide services for obtaining property and/or rights-of-way as requested by the Authority.
- (c) Provide services associated with assessments for sewer service as requested by the Authority.
- (d) Any other services as may be agreed upon by the parties.

5. City Information System:

- (a) Provide "mainframe computer services" needed for customer billing, financial reporting and processing of payroll and invoices and other functions.
- (b) Any other services as may be agreed upon by the parties.

6. Finance Department:

- (a) Issue payroll checks for the Authority staff.
- (b) Administer benefit programs, including but not limited to the pension plan, health care, dental benefits and worker's compensation claims (as provided herein).
- (c) Any other services as may be agreed upon by the parties.

B. The City shall furnish such other services to the Authority at such times as may be required and requested by the Authority.

IV. CITY CAPITAL PROJECTS:

From time to time the City undertakes capital improvement projects which include construction, replacement and/or modification of the System as a part of their improvements. The Authority shall reimburse the City for all Capital Expenses incurred by the City for such System improvements as follows:

A. Current Projects:

- (i) The Authority shall pay the City for all City capital projects which are under contract or completed as of the Effective Date but for which the City has not been fully reimbursed by the Authority. The City shall

invoice the Authority for reimbursement, with the invoice including backup data to adequately support the invoice. Such backup data shall include a description of the project, the System facilities constructed or to be constructed and the cost, not to be exceeded, of such improvements.

- (ii) To be reimbursed for City capital projects awarded after the Effective Date, which include construction replacement and/or modification of the System, the Authority shall approve the proposed construction plans and specifications, as they relate to the System improvements, prior to the City advertising for bids for the project. The City shall invoice the Authority for reimbursement with the invoice including backup data to adequately support the invoice.

V. VEHICLES:

A. The City hereby subleases to the Authority vehicles leased to the City by the Equipment Leasing Authority and currently being used by the Authority. The vehicles will be used in the ordinary and usual work for which they are designed provided that any such use is in conformity with all applicable laws, any insurance policies and any warranties of the manufacturer with respect to the vehicles.

B. The City agrees to maintain, service, repair and insure said vehicles to the same extent as the City would, in the prudent management of its properties, for similar equipment owned or leased by the City and to the extent required to maintain the vehicles in good operating condition and in compliance with any applicable requirement of law or of any governmental authority having jurisdiction thereof.

C. The Authority will not permit any vehicles to be used or operated in violation of any law or any rule, regulation or order of any governmental authority having jurisdiction thereof. The Authority shall be responsible for the payment of all fines and penalties resulting from the Authority's use of the vehicles.

D. The Authority may return any vehicles to the City at its discretion at any time and shall return such vehicles at such location as the parties shall agree. Upon the expiration of the term of this Agreement or any prior termination of the Agreement for any reason, the Authority shall return any remaining vehicles to the City.

E. The Authority will reimburse the City for the costs of the services provided under the sublease in accordance with the terms of this Agreement.

VI. WATER EXONERATION HEARING BOARD:

A. The City shall maintain in existence the Water Exoneration Hearing Board with such changes to its composition as shall be recommended by the Authority and approved by City Council. After hearings, the Board shall recommend to the Authority the manner in which disputes as to rates or service shall be resolved, including recommendations as to exonerations, but the decision of the Board of the Authority shall be final in all such cases, subject to the right of appeal to the Court of Common Pleas under Local Agency Law.

VII. PAYMENTS BY THE AUTHORITY TO THE CITY:

A. The Authority shall reimburse the City for all City Expenses incurred by the City through December 31, 1994, inclusive, for the operation and maintenance of the System in accordance with the provisions of the Lease and Maintenance Agreement dated March 29, 1984.

B. The Authority shall reimburse the City for equalization payments made by the City to the Pennsylvania American Water Company or upon mutual agreement, make such payments directly to the Pennsylvania American Water Company.

C. Beginning January 1, 1995 and for each year thereafter, the City shall budget and pay expenditures required to provide the services under this Cooperation Agreement (including Actual Direct Expenses, Public Works Salaries and Wages and Overhead Expenses). The Authority shall pay the City monthly Actual Direct Expenses, Public Works Salaries and Wages and Overhead Expenses for such services where applicable.

D. In addition to other payments to the City provided for herein, the City shall be entitled to receive up to 600,000,000 gallons of water each year to be used by the City, its departments, agencies and instrumentalities (i.e., Pittsburgh Zoo, Phipps Conservatory, National Aviary in Pittsburgh and Schenley Golf Course) and as the City may be contractually obligated to provide as of the Effective Date hereof. The City shall not receive a credit for any water not so used. To the extent in excess of 600,000,000 is used, the Authority may offset that cost against moneys owed the City hereunder.

E. The Authority will reimburse the City for all worker's compensation benefits paid by the city on behalf of those employees in positions described in II B above. As to worker's compensation claims that may be filed subsequent to the date the positions are eliminated from the City budget, for injuries occurring prior to the date the positions are eliminated from the City budget the Authority will either directly pay the claim or reimburse the City for any benefits paid.

F. Neither the credit or taxing power of the City shall be pledged for payment of any Authority Indebtedness, and the City shall not be liable for any Authority debt payments.

G. The parties hereby agree that the Authority at its discretion may terminate any or all of services provided by the City. Such termination shall be effective upon a minimum of ninety (90) days written notice from the Authority to the City.

VIII. RATES:

A. The Authority shall establish rates pursuant to the covenants contained in the indenture securing the Authority's debt obligations, which shall be in an amount sufficient but no higher than necessary to meet the Authority's obligations thereunder together with the City's Overhead Expenses, all reasonable contingencies and to meet its obligations as they come due.

B. In conformity with Article III, Section Two of the By-laws of the Authority, the Authority shall hold a regular meeting of its Board each year to consider or establish rates. It is understood and agreed that the Authority may meet at any other times if the Authority determines that its existing rates will not produce sufficient revenues to meet its outstanding obligations and otherwise as needed pursuant to VIII A above.

IX. COOPERATION:

A. The City and the Authority shall cooperate with each other to the end that reasonable and adequate service shall be provided to customers of the system.

B. The City shall grant to the Authority all necessary easements and rights of way which may be required in addition to those heretofore leased by the City to the Authority.

C. The Authority shall not be required to pay for fees or charges for City permits or licenses.

X. INSURANCE AND INDEMNIFICATION:

A. The City shall and hereby does assume sole responsibility for all claims, including employee claims, demands, lawsuits, judgments against the City or the Authority arising from any work or service provided (i) in connection with the System on behalf of the Authority before the Effective Date of this Agreement and (ii) in connection with the Sewer System on or after the Effective Date.

B. The City may purchase excess limits insurance applicable to the Sewer System and, if it does so, it shall include the Authority as an additional insured; and the City shall be solely responsible for the payment of the premium.

C. The City shall and hereby does assume responsibility for all claims, demands, lawsuits, judgments against the City or the Authority arising from any work or service provided

to the Authority on or after the effective date of this Agreement; and the City does hereby indemnify, save harmless and agree to defend the Authority from and against all such claims, demands, lawsuits and judgments arising from any work or service provided to the Authority.

D. The City shall indemnify, save and hold harmless, and defend Authority, its officers, agents and employees from all liens, charges, claims, demands, losses, costs, judgments, liabilities and damages of every kind and nature whatsoever, including court costs and attorney's fees, arising by reason of City's intentional or negligent failure to perform any services under this Agreement; any act, error or omission of the City or any agent, employee, licensee, contractor or subcontractor of City, intentional or negligent, of any of the terms, conditions or provisions of this Agreement.

E. The City hereby indemnifies and saves harmless the Authority from any and all claims, including costs and reasonable attorney fees, based upon alleged improper expenditures made by the City in violation of Federal, State, or Local Law or if contrary to the provisions of any indenture or similar agreement securing Authority indebtedness.

XI. DEFICIENCIES IN PERFORMANCE:

If in the opinion of the Authority the City fails to operate and maintain the Sewer System in accordance with the standards prevailing prior to the lease of said system by the City to the Authority, the Authority shall so advise the City in writing, describing the specific deficiencies on which the opinion is based, and shall request the City to explain in writing said deficiency within thirty days of receipt of said notice. If the City fails to satisfy the Authority within said period, the Authority may direct the City in writing to correct such deficiency. The City shall thereupon take steps toward correction of said deficiency within sixty days after receipt by it of written notice by the Authority, or, if the City disagrees, it may exercise its rights to call for arbitration under Article XII hereof within said sixty day period. If the City shall fail to take steps to correct the deficiency within sixty days after receipt of the Authority notice or within sixty days after an adverse arbitration decision, whichever is later, then the Authority may itself cause the corrective work to be done. It is understood and agreed that all such corrective work shall be undertaken at the Authority's expense, and that the City assumes no liability for costs incurred to correct any of such deficiencies.

XII. SETTLEMENT OF DISPUTES:

In the event of any dispute between the Authority and the City with respect to the matters set forth in Paragraph XI of this Agreement, excepting, however, disputes arising out of renegotiation hereof, such disputes shall be settled by arbitration in accordance with the provisions of the Act of April 25, 1927 P.L. 381 as amended, of the Commonwealth of Pennsylvania. In any such case three arbitrators shall be appointed, one by the Authority, one by the City, and one by the two arbitrators so appointed by the Authority and the City. The

decision of a majority of the arbitrators shall be binding and conclusive upon the Authority and the City. In the event of the failure of the two arbitrators appointed by the Authority and the City to effect the appointment of a third arbitrator within two weeks after the appointment of the second, the third arbitrator shall be appointed by the trustee at that time under the trust indenture. The expense of such arbitration, exclusive of expenses of each party in its own behalf, shall be born equally by the parties.

III. AMENDMENTS:

This agreement may be amended in any respect by mutual written agreement of the parties.

IV. NOTICES:

All notices required under this Agreement shall be in writing and shall be mailed by certified mail or delivered as follows:

1. Notices to the Authority shall be sent to the Executive Director, the Pittsburgh Water and Sewer Authority, 441 Smithfield Street, Pittsburgh, Pennsylvania 15222.
2. Notices to the City shall be sent to Mayor, City of Pittsburgh, Pittsburgh, Pennsylvania 15219.

XV. ASSIGNMENT:

This Agreement shall not be assignable by either party without the written consent of the other.

XVI. TERM AND TERMINATION:

The term of this Agreement shall be forty (40) years commencing on the Effective Date. The City shall have the right to terminate this Agreement at any time upon ninety (90) days written notice to the Authority; provided, however, that any such termination shall be subject to the City providing for the payment in full of all existing liabilities, contingent and otherwise, of the Authority. The Authority shall have the right to terminate this Agreement at any time upon ninety (90) days written notice to the City.

The City understands that it may be required to enter into a supplemental agreement to extend the term of this Cooperation Agreement for such period as may be necessary to cover future financing by the Authority of Capital Additions.

EXHIBIT B

Positions to be Transferred
at a Later Date

	<u>Position</u>	<u>Current Employee</u>	<u>Union</u>
1.	Project Engineer, E&C	Bailey	Non-Union
2.	Engineer Tech. III, E&C	Waldorf	Non-Union
3.	Staff Engineer, E&C	Kasper	AFSCME
4.	Engineer II, E&C	vacant	AFSCME
5.	Engineer II, E&C	Eichelman	AFSCME
6.	Clerk Typist II, E&C	Schaub	AFSCME

Notwithstanding the foregoing provision for extension of the term of this Agreement to cover future financings, it is understood and agreed that, subject to appropriate amendment of the Article of Incorporation of the Authority extending its term of existence, this Cooperation Agreement shall be automatically renewed at the expiration of three (3) additional terms of five (5) years each, unless either party at least one year prior to the expiration of each renewal term shall request in writing a renegotiation for the subsequent term. If such renegotiations fail to produce a written agreement within the twelve month period, this Agreement shall continue for at least six (6) months after the end of the then current term.

XVI. GOVERNING LAW:

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

XVII. CONFLICT:

To the extent that any provision hereof conflicts with any provision of any Trust Indenture securing any indebtedness of the Authority, the provisions of the Trust Indenture shall prevail.

XIX. SEVERABILITY:

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement; and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein.

XX. MISCELLANEOUS:

This Agreement shall be effective as of January 1, 1995.

The City is authorized to enter into this Agreement pursuant to Resolution No. 12, approved January 24, 1995, effective January 24, 1995; and the Authority is authorized to do so pursuant to Resolution No. 47 of 1995 duly adopted at a special meeting of its board held on March 31, 1995.

IN WITNESS WHEREOF, This Agreement has been duly executed this 27th day of July, 1995.

ATTEST:

Lowan A. Winanda
Secretary Treasurer

ATTEST:

M. Linda Hengeman
Secretary to the Mayor

THE PITTSBURGH WATER AND SEWER
AUTHORITY

By [Signature]
Authorized Officer

CITY OF PITTSBURGH

By [Signature]
Mayor

Approved as to Form:

[Signature]
City Solicitor

Positions Transferred
as of Effective Date

	<u>Position</u>	<u>Current Employee</u>	<u>Union</u>
1.	Project Manager, E&C	Borneman	Non-Union
2.	Project Engineer, E&C	Jones	Non-Union
3.	Staff Engineer, E&C	Troianos	AFSCME
4.	Project Manager, Public Works	Lockard	Non-Union

CAPITAL LEASE AGREEMENT

THIS AGREEMENT, is made and entered into as of July 15, 1995, effective July 27, 1995 (the "Effective Date"), by and between the CITY OF PITTSBURGH (the "Lessor") having an office at City County Building, Pittsburgh, Pennsylvania 15219;

A
N
D

THE PITTSBURGH WATER AND SEWER AUTHORITY, having its principal office at 441 Smithfield Street, Pittsburgh, Pennsylvania 15222 (the "Lessee").

WITNESSETH:

WHEREAS, the Lessor desires to lease to Lessee and the Lessee desires to lease from Lessor, certain assets located in and around the City of Pittsburgh and used in connection with the operation of a water and sewer system by the Lessee under a Lease and Management Agreement dated March 29, 1984 (the "Lease and Management Agreement"), as more fully described herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto, intending to be legally bound hereby, do hereby agree as follows:

1. Termination of Existing Lease. Lessor and the Lessee hereby agree that on the Effective Date of this Lease, the Lease and Management Agreement shall terminate by mutual agreement of the Lessor and the Lessee and all obligations of either party thereunder shall cease.

2. Demise of Premises and Assignment of Contracts.

a. The Lessor hereby demises and lets to the Lessee, and the Lessee hereby takes and leases from the Lessor, for the term and upon the provisions hereinafter specified, the following described property (collectively the "Leased Property"): (i) the entire network of water and sewage transmission pipelines as detailed on the Lessee's engineering maps, all water storage facilities (collectively the "System") and certain land and buildings (the "Real Property"), both the System and the Real Property are more fully described on Exhibit A hereto, (ii) all fixtures relating to the Real Property, (iii) all equipment used in connection with or related to the operation of the System (the "Equipment"), (iv) all water and sewage transmission pipelines dedicated by builders or developers subsequent to the Effective Date and all assets associated with or used in connection with such pipelines, (v) all spare parts wherever

located and used in connection with the operation of the Equipment, and (vi) all inventory used in connection with the operation of the Equipment; provided, however, that the Leased Property shall not include the assets set forth on Exhibit B hereto.

b. Lessor hereby assigns to Lessee and Lessee hereby assumes all contracts, leases, permits, licenses and other instruments (collectively, the "Contracts") used in connection with the operation of the System, including but not limited to those listed on Exhibit A hereto. Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any contract or any right or benefit arising thereunder or resulting therefrom if an attempted transfer or assignment thereof, without the consent of a third party thereto, would constitute a breach thereof or in any way affect the rights of Lessor or Lessee thereunder. If such consent is not obtained, or if an attempted transfer or assignment thereof would be ineffective or would affect the rights of Lessor thereunder so that Lessee would not in fact receive all such rights, Lessor shall cooperate with Lessee in any arrangement designed to provide for Lessee the benefits under any such contracts, or any claim or right or any benefit arising thereunder or resulting therefrom, including, without limitation, enforcement for the benefit of Lessee of any and all rights of Lessor against a third party thereto arising out of the breach or cancellation by such third party or otherwise.

c. Other than liabilities arising out of operation of the Leased Premises or the Contracts subsequent to the Effective Date, Lessee does not, pursuant to this Lease, assume any liabilities or obligations of Lessor.

3. Term.

(a) Subject to the provisions hereof, the Lessee shall have and hold the Leased Property for a term commencing as of July 15, 1995 and ending on September 1, 2025 at 12:00 midnight (the "Term").

(b) At the expiration of the Term the Lessee shall have the option to acquire all of the Leased Property from the Lessor in consideration of the payment of one dollar (\$1.00) in immediately available funds by the Lessee to the Lessor.

4. Rent. The Lessee shall pay to the Lessor as rent for the Term the total sum of One Hundred One Million Four Hundred Sixteen Thousand Nine Hundred Seventy-Four Dollars and Sixty Cents (\$101,416,974.60) as follows:

(a) The Lessee on the scheduled payment dates shall pay to the Lessor in immediately-available funds the following amounts (the "Capital Lease Payments"):

<u>Payment Date</u>	<u>Payment Amount</u>
July 27, 1995	\$35,000,000
January 2, 1996	\$20,000,000

August 1, 1996	\$20,000,000
January 2, 1997	\$21,017,249.60

(b) The Lessee shall receive a credit of Five Million Three Hundred Ninety-Nine Thousand Seven Hundred Twenty-Five Dollars (\$5,399,725) based on prepayments calculated under generally accepted accounting principles at December 31, 1994 and made under the Lease and Management Agreement prior to the Effective Date (the "Credit").

The Capital Lease Payments and the Credit are collectively referred to herein as the "Rent."

5. Bond Contingency. It is expressly agreed by the Lessor that the obligations of the Lessee hereunder are contingent on the Lessee's successful issuance of the Lessee's \$103,020,000 aggregate principal amount Water and Sewer System Subordinate Revenue Bonds, Series B of 1995 (the "Bonds") to finance this Lease. If for any reason the Lessee is unable to issue the Bonds, the Lease and Management Agreement shall remain in full force and effect unmodified by this Lease.

From and after the issuance of the Bonds, the Lessor shall not take any actions that will adversely affect the tax exempt status of the Bonds.

6. Use of Leased Premises; Quiet Enjoyment.

(a) The Lessee may occupy and use the Leased Property in order to provide water and sewer services and services incidental thereto to customers in and around the City of Pittsburgh and other purposes consistent with the public purposes of the Lessee. Lessee shall not use or occupy or permit any Leased Property to be used or occupied, nor do or permit anything to be done in or on any of the Leased Property, in a manner which would materially violate any law or legal requirement.

(b) Subject to the provisions hereof, so long as no Event of Default has occurred and is continuing, Lessor covenants to do no act to disturb the peaceful and quiet occupation and enjoyment of the Leased Property by Lessee, provided that Lessor may enter upon and examine any of the Property at such reasonable times as Lessor and Lessee based upon their mutual convenience may select for the purpose of inspecting the Leased Property, verifying compliance or non-compliance by Lessee with its obligations hereunder and the existence or non-existence of any Event of Default or event which with the passage of time and/or notice would constitute an Event of Default.

(c) During the term of this Lease, Lessor covenants not to assign, sell, convey or transfer any right, title or interest in or to the Leased Property or create, incur, assume or suffer to exist, directly or indirectly, any lien, encumbrance or security interest of any kind on the Leased Property, other than the encumbrances set forth on Exhibit D hereto or other encumbrances existing as of the Effective Date that do not materially detract from the value or

interfere with the present use of any of the Leased Property or otherwise materially impair its intended use.

7. Representations and Warranties of the Lessor. The Lessor hereby represents and warrants to the Lessee the following:

(a) Organization; Power; Good Standing. The Lessor has all requisite power and authority to own, operate and lease its properties, to carry on its business as now being conducted and to enter into this Lease and perform its obligations hereunder.

(b) Authority Relative to Lease. The execution, delivery and performance of this Lease by the Lessor will have been duly and effectively authorized by all necessary action by the Lessor. This Lease has been duly executed by the Lessor and is a valid, legally binding and enforceable obligation of the Lessor.

(c) Effect of Lease. The execution, delivery and performance of this Lease by the Lessor and the consummation of the transactions contemplated hereby will not (i) require the consent, approval or authorization of any person, corporation, partnership, joint venture or other business association or public authority (other than the City Council of the Lessor); (ii) violate, with or without the giving of notice or the passage of time, or both, any provisions of law or statute or any rule, regulation, order, award, judgment or decree of any court or governmental authority applicable to the Lessor; or (iii) conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any of the Leased Property pursuant to any charter, bylaw, indenture, mortgage, lease, contract, agreement or other instrument, or any order, judgment, award, decree, statute, ordinance, regulation or any other restriction of any kind or character, to which the Lessor is a party, or by which the Lessor or any of the Leased Property may be bound.

(d) Absence of Certain Changes or Events. Except as otherwise disclosed in Exhibit C hereto, with regard to the Leased Property and the Contracts, the Lessor has not:

(i) mortgaged, pledged or subjected to any lien, charge, security interest or to any other encumbrance any of the Leased Property or the Contracts (whether tangible or intangible); and

(ii) suffered any material casualty loss or damage to the Leased Property, whether or not such loss or damage shall have been covered by insurance.

(e) Title to Properties; Absence of Liens and Encumbrances; Leases.

(i) The Lessor has good and marketable title to all of the Real Property and good title to all of the Leased Property, tangible and intangible, free and clear of

all claims and encumbrances (including all property reflected in Exhibit A hereto), other than (i) as specifically disclosed in Exhibit D hereto, and (ii) such imperfections of title, easements, liens, pledges, charges and encumbrances, if any, as do not materially detract from the value or interfere with the present use of any of the Leased Property or otherwise materially impair its intended use;

(ii) All leases and easements pursuant to which the Lessor, leases or uses any real or personal property included in the Leased Property are valid and binding against the Lessor, in accordance with their terms and there is not under any of such leases or easements any existing default by the Lessor, event of default by the Lessor, or event which with notice or lapse of time, or both, would constitute a default by the Lessor (and in respect of which the Lessor has not taken adequate steps to prevent such a default or event of default from occurring). Except as set forth on Exhibit D hereto, none of the rights of the Lessor under any of such leases or easements is subject to termination or modification as the result of the transactions contemplated hereby.

(f) Contracts. To the knowledge of Lessor, all of the Contracts are valid and enforceable in accordance with their terms against Lessor and against the other parties to such Contracts in all material respects.

(g) List of Properties, Contracts and Other Data. Exhibit A hereto is a list setting forth the Leased Property and the Contracts.

(h) Litigation. Except as disclosed in Exhibit E hereto, there are no claims, actions, suits, proceedings or investigations pending or, to the Lessor's knowledge, threatened against or affecting the Leased Property or the Contracts at law or in equity or in admiralty, or before or by any federal, state, municipal or governmental or nongovernmental department, commission, board, bureau, agency or instrumentality, United States or foreign which would have a material adverse effect on the Leased Property or the Contracts.

(i) Licenses; Permits; Authorization. Exhibit F hereto is a description of all approvals, authorizations, consents, licenses, orders and permits of all governmental agencies, whether United States, state or local, issued to or in favor of the Lessor with respect to the operation of the Leased Property.

(j) Environmental Matters.

(i) In connection with the Leased Property, there are no unresolved notices of violation, orders, claims, citations, complaints, penalty assessments, suits or other proceedings, administrative, civil, criminal, at law or in equity, pending against the Lessor and, to the knowledge of the Lessor, no investigation or review is pending or threatened against the Lessor by any governmental entity or third party with respect to any alleged violation of any federal, state or local environmental law, regulation, ordinance, standard, permit or order in connection with the conduct of the System.

(ii) In connection with the operation of the Leased Property to the Lessor's knowledge, the Lessor is not in violation of any environmental law.

(iii) Since 1987, except as reported on The Superfund Amendments and Reauthorization Act of 1986, Title III, Section 313, Toxic Release Inventory Reporting Form Rs ("Toxic Substance Release Reports"), to the Lessor's knowledge, no hazardous, toxic or polluting substances have been released, discharged or disposed of at or from property now or formerly owned or operated by the Lessor and part of the Leased Property.

(iv) Except as listed on Exhibit G hereto, to the Lessor's knowledge, there are no outstanding public notices regarding noncompliance with applicable state and federal Safe Drinking Water Act rules and regulations, no temporary emergency actions, no public notices regarding lead, nor any variances or exemptions from MCL's or treatment techniques.

(v) Notwithstanding anything herein to the contrary, Lessor shall notify Lessee of any violation, orders, claims, citations, complaints, penalty assessments, suits or other proceedings, administrative, civil, criminal, at law or in equity, Lessor receives in connection with the Leased Property.

8. Representations and Warranties of the Lessee. The Lessee represents and warrants to the Lessor as follows:

(a) Organization; Good Standing; Power. On the Closing Date the Lessee will be a municipal authority duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and will have all requisite power and authority to own, lease and operate its properties and the Leased Property to carry on its business as now being conducted and the business conducted in connection with the Leased Property and to enter into this Lease and perform its obligations.

(b) Authority Relative to Lease. On the Closing Date, the execution, delivery and performance of this Lease and the transactions contemplated hereby and thereby by the Lessee will have been duly and effectively authorized and ratified by all necessary action by the Lessee. This Lease has been duly executed by Lessee and is a valid, legally binding and enforceable obligation of Lessee.

(c) Effect of Lease. The execution, delivery and performance of this Lease and the consummation of the transactions contemplated hereby will not (i) require the consent, approval or authorization of any person, corporation, partnership, joint venture or other business association or other public authority (other than the Board of the Lessee); (ii) violate, with or without the giving of notice or the passage of time, or both, any provisions of law or statute or any rule, regulation, order, award, judgment or decree of any court or governmental authority applicable to the Lessee; or (iii) conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any of the properties or assets of the Lessee pursuant to any indenture,

corporate charter, bylaw, mortgage, deed of trust, lease, contract, agreement or other instrument or any order, judgement, award, decree, statute, ordinance, regulation or any other restriction of any kind or character, to which the Lessee is a party, or by which the Lessee or any of its assets or properties may be bound.

(d) Litigation. Except as described on Exhibit H hereto, there are no claims, actions, suits, proceedings or investigations pending against the Lessee, or to the best of Lessee's knowledge, threatened, that would have a material adverse effect on the transaction contemplated hereby.

9. Transactions prior to the Effective Date.

(a) Permits. From and after the date hereof, the Lessor shall, upon the Lessee's reasonable request, provide reasonable assistance to the Lessee in obtaining transfer of any environmental or operating permits and licenses issued or held by the Lessor and necessary for the Lessee to conduct its operations with the Leased Property.

(b) Consents. The Lessor agrees that it shall obtain prior to the Effective Date all material consents, assignments, and approvals as may be required in order to enable it to perform its obligations hereunder, including, but not limited to, all material consents and approvals required to permit it to make the transfers to the Lessee contemplated herein so that the Lessee may enjoy after the Effective Date all rights and benefits presently enjoyed by the Lessor with respect to the Leased Property.

10. Additional Condition Precedent. The obligations of Lessee under this Lease are subject to the satisfaction at or prior to the Effective Date that all consents required to assign the Contracts to Lessee shall have been obtained.

11. Compliance with Laws. The Lessee shall, at its expense, materially comply with and conform to all legal requirements placed on the Leased Property during the Term, including all applicable environmental laws; unless the Lessee is contesting the requirement in good faith by appropriate legal proceedings promptly initiated and diligently prosecuted.

12. Maintenance and Repair. The Lessee shall at all times maintain the Leased Property in as good condition as it is in on the date hereof, ordinary wear and tear excepted. The Lessee shall take every other action necessary or appropriate for the preservation and safety of the Leased Property. The Lessee shall promptly make all alterations of every kind and nature, whether foreseen or unforeseen, which may be required to comply with the foregoing requirements of this Paragraph 12 or any authority having jurisdiction over the Lessee or the Leased Property.

13. Indemnification of the Lessor. Subject to the terms of the Cooperation Agreement dated June 15, 1995 between the Lessor and the Lessee, pursuant to which the Lessor has agreed to provide certain services to the Lessee in connection with the operation of the Leased Property (the "Cooperation Agreement"), the Lessee agrees to indemnify and hold the Lessor harmless against and in respect of:

(a) all obligations and liabilities of the Lessee relating to the Leased Premises, whether accrued, absolute, fixed, contingent or otherwise, occurring after the Effective Date of this Lease;

(b) any loss, liability or damage suffered or incurred by the Lessor because of a breach of any obligation of the Lessee incurred under this Lease, or because any representation or warranty by the Lessee contained herein shall be false as of the Effective Date;

(c) all reasonable costs and expenses (including attorney's fees) incurred by the Lessor in connection with any action, suit, proceeding, demand, assessment or judgment for which the Lessor is entitled to indemnification under this Paragraph 13.

14. Indemnification of the Lessee. Subject to the terms of the Cooperation Agreement, the Lessor agrees to indemnify and hold the Lessee harmless against and in respect of:

(a) all obligations and liabilities of the Lessor relating to the Leased Premises, whether accrued, absolute, fixed, contingent or otherwise, occurring before the Effective Date of this Lease;

(b) any loss, liability or damage suffered or incurred by the Lessee because of a breach of any obligation of the Lessor incurred under this Lease, or because any representation or warranty by the Lessor contained herein shall be false as of the Effective Date;

(c) all reasonable costs and expenses (including attorney's fees) incurred by the Lessee in connection with any action, suit, proceeding, demand, assessment or judgment for which the Lessee is entitled to indemnification under this Paragraph 14.

15. Insurance. (a) The Lessee shall maintain the following insurance on or in connection with the Leased Property:

(i) Insurance against loss or damage to the Real Property and the System by fire and other risks from time to time included under standard extended and additional extended coverage policies, including vandalism and malicious mischief, sprinkler, and, to the extent any of the Leased Property is in a flood zone, flood insurance in amounts not less than the actual replacement value of the Real Property and the System, excluding footings and foundations and other parts of the Real Property which are not insurable (or, in the case of plate

glass insurance, the replacement cost of all plate glass in the Leased Property). Such policies shall contain replacement cost endorsements.

(ii) General public liability insurance against claims for bodily injury, death or property damage occurring on, in or about any of the Leased Property, in an amount not less than \$1,000,000 for bodily injury or death to any one person, not less than \$1,000,000 for bodily injury or death in any one accident, and not less than \$2,000,000 for property damage.

(iii) Worker's compensation insurance covering all persons employed by the Lessee in connection with any work done on or about any of the Leased Property for which claims for death or bodily injury could be asserted against the Lessor, the Lessee or any of the Leased Property or, in lieu of such worker's compensation insurance, a program of self-insurance complying with the rules, regulations and requirements of the appropriate agency of the Commonwealth of Pennsylvania.

(iv) Such other insurance on or in connection with any of the Leased Property as the Lessor may reasonably require, which at the time is commonly obtained in connection with properties similar to the Leased Property.

16. Casualty. If any casualty occurs, the Lessee shall give the Lessor immediate notice thereof. The Lessee is hereby authorized to adjust, collect and compromise, in its discretion and upon notice to the Lessor, all claims under any of the insurance policies required by Paragraph 15 and to execute and deliver on behalf of the Lessor all necessary proofs of loss, receipts, vouchers and releases.

17. Events of Default and Remedies.

(a) If any one or more of the following events (an "Event of Default") shall happen:

(i) Failure by the Lessee to make due and punctual payments of all or any portion of the Rent as and when the same shall be due and payable as provided in other provisions of this Lease and such failure shall continue for ten (10) days after receipt of notice thereof from the Lessor to the Lessee; or

(ii) Failure by the Lessee to materially perform and comply with any of the other agreements, terms, covenants, or conditions of this Lease within a period of thirty (30) days after notice from the Lessor to the Lessee specifying that such items are in default; provided that, if such failure is not susceptible of being cured with due diligence within such thirty (30) day period, the time allowed the Lessee to cure such failure shall be extended for such period as may be reasonably necessary so long as the Lessee promptly makes all efforts to complete such cure with all due diligence; provided, further, that if such failure shall subject the Leased Property to any risk of seizure, foreclosure, forfeiture or shall subject the Lessor to

any risk of default under any other leases, mortgages or agreements of which the Lessee has been given notice or of criminal prosecution, the time allowed hereunder for curing such failure shall immediately and without further notice cease notwithstanding anything to the contrary contained in this Lease; or

(iii) The Lessee shall make a general assignment for the benefit of creditors; or

(iv) The Lessee shall file any voluntary petition in bankruptcy or an involuntary petition shall be filed by the creditors of the Lessee, which involuntary petition shall remain undischarged for a period of ninety (90) days; or

(v) A receiver shall be employed or appointed to take possession of substantially all of the assets of the Lessee, which receivership shall remain undissolved for a period of ninety (90) business days after creation thereof; or

(vi) The Lessee shall admit in writing its inability to pay its debts as they become due, or the Lessee shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or the Lessee shall file an answer admitting or failing timely to contest a material allegation of a petition filed against the Lessee in any such proceeding or, within sixty (60) days after the commencement of any proceeding against the Lessee seeking any reorganization, or arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statutes, law or regulation, such proceeding shall not have been dismissed;

then in any such event, the Lessor shall have all rights or remedies available to the Lessor at law or in equity, including specific performance.

(b) No failure by the Lessor to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach of such agreement, term, covenant or condition. No waiver of any breach shall affect or alter this Paragraph but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

(c) Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Lessor of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Lessor of any or all other rights or

remedies provided for in this Lease or now or hereafter existing in law, in equity, under any statute or otherwise.

18. Miscellaneous.

(a) Survival of Representations. All representations, warranties and agreements made by the Lessor and the Lessee in this Lease or in any exhibit, certificate, document or instrument delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby, and the remedies of the Lessee and the Lessor with respect thereto, shall survive the termination of this Lease for a period of five (5) years.

(b) Waivers and Amendment.

(i) The Lessor or the Lessee may, by written notice to the other may, (i) extend the time for the performance of any of the obligations or other actions of the other; (ii) waive any inaccuracies in the representations or warranties of the other contained in this Lease; (iii) waive compliance with any of the covenants of the other contained in this Lease; and (iv) waive or modify performance of any of the obligations of the other.

(ii) This Lease may be amended, modified or supplemented only by a written instrument executed by all the parties hereto. Except as provided in the preceding sentence, no action taken pursuant to this Lease, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained herein. The waiver by any party hereto of a breach of any provision of this Lease shall not operate or be construed as a waiver of any subsequent breach.

(c) Expenses. Whether or not the transactions contemplated by this Lease are consummated, the Lessee shall be responsible for the fees and expenses of its counsel, accountants, other experts and all other expenses incurred by it incident to the negotiation, preparation and execution of this Lease, and the Lessor shall be responsible for any and all such fees and expenses incurred by it incident to the negotiation, preparation and execution of this Lease and the performance by it of its obligations hereunder.

(d) Occurrences of Conditions Precedent. Each of the parties hereto agrees to use its best efforts to cause all conditions precedent to its obligations under this Lease to be satisfied.

(e) Notices. All notices, requests, demands and other communications which are required or may be given under this Lease shall be in writing and shall be deemed to have been duly given if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid:

(a) If to the Lessor to:
City of Pittsburgh
City County Building

Pittsburgh, PA 15219
Attention: City Solicitor

- (b) If to the Lessee to:
The Pittsburgh Water and Sewer Authority
441 Smithfield Street
Pittsburgh, PA 15222
Attention: Executive Director

or to such other address as any party shall have specified by notice in writing to the other.

(f) Entire Agreement. This Lease and the Exhibits hereto constitute the entire agreement between the Lessee and the Lessor with respect to the subject matter hereof.

(g) Binding Effect; Benefits. This Lease shall inure to the benefit of and be binding upon the parties hereto and their successors; nothing in this Lease, expressed or implied, is intended to confer on any other person other than the parties hereto, or their successors, any rights, remedies, obligations or liabilities under or by reason of this Lease.

(h) Non-assignability. This Lease and any rights pursuant hereto shall not be assignable by either party without the prior written consent of the other and any assignment in violation hereof shall be null and void and of no force and effect.

(i) Applicable Law. This Lease and the legal relations between the parties hereto shall be governed by and in accordance with the laws of the Commonwealth of Pennsylvania.

(j) Section and Other Headings. The section and other headings contained in this Lease are for reference purposes only and shall not affect the meaning or interpretation of this Lease.

(k) Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

(l) Recordation. Lessor and Lessee agree to execute contemporaneously herewith a Memorandum of Lease for recordation in the Office of the Recorder of Deeds of Allegheny County, Pennsylvania, in lieu of this Lease.

(m) Further Assurances. The parties hereto each agree to execute, make, acknowledge and deliver such instruments, agreements, assignments, other instruments of title and conveyances and other assurances and documents as may be required to effectuate the purposes of this Capital Lease Agreement and to consummate the transactions contemplated hereby.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed and delivered this Lease as of the date first above written.

ATTEST:

Koran A. Nunn
Secretary
Treasurer

THE PITTSBURGH WATER AND
SEWER AUTHORITY

By: *Joseph P. ...*
Chairman

ATTEST:

M. Linda Langewere
Secretary to the Mayor

CITY OF PITTSBURGH

By: *F. ...*
Mayor

Approved as to Form:

Suzanne ...
City Solicitor

Countersigned:

By: *Tom ...*
City Controller

Approved as to form:
D. M. McComey & Chilcote, P.C.,
Solicitor to the Controller
City of Pittsburgh

Harvey J. Roberts

EXHIBITS

- A. Leased Property and Contracts.
- B. Excluded Assets
- C. Description of certain recent changes or events affecting the Lessor.
- D. Description of liens, security interests and encumbrances on property.
- E. Description of litigation involving the Leased Property.
- F. List of approvals, authorizations, consents, licenses and permits required in connection with the operation of the business.
- G. Environmental Matters.
- H. Description of litigation against the Lessee.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017951 (water)
	:		C-2020-3019348
v.	:		C-2020-3019305
	:		
Pittsburgh Water and Sewer Authority - Water	:		
	:		
Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017970 (wastewater)
	:		C-2020-3019349
v.	:		C-2020-3019302
	:		
Pittsburgh Water and Sewer Authority - Wastewater	:		
	:		
Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to Authorize the Pay-As-You-Go Method of Financing	:	Docket Nos.	P-2020-3019019
	:		
	:		
	:		
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**DIRECT TESTIMONY OF
HOWARD J. WOODS, JR., P.E.**

**ON BEHALF OF
THE CITY OF PITTSBURGH**

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1. STATEMENT OF QUALIFICATIONS

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is Howard J. Woods, Jr. and my address is 49 Overhill Road, East Brunswick, New Jersey 08816-4211.

Q. BY WHOM ARE YOU EMPLOYED?

A. I am an independent consultant and the City of Pittsburgh ("City") has engaged me in this matter.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL QUALIFICATIONS.

A. I hold a Bachelor of Civil Engineering from Villanova University (1977) and a Master of Civil Engineering with a concentration in water resources engineering also from Villanova University (1985). I am a registered professional engineer in New Jersey, New York, Maryland, Pennsylvania, Delaware, and New Mexico. I am also licensed to perform RAM-WSM security assessments of public water systems. I am an active member of the American Society of Civil Engineers, the National Ground Water Association, the American Water Works Association, the Water Environment Federation, and the International Water Association.

Q. HAVE YOU PROVIDED TESTIMONY IN UTILITY MATTERS ON PRIOR OCCASIONS?

1 A. Yes. I have testified in numerous rate setting proceedings and quality of service evaluations
2 in matters before the Public Utility Commissions in New Jersey, New York, Connecticut,
3 Delaware, Pennsylvania, and Kentucky. The focus of my testimonies is on matters involving
4 revenue requirement, utility operations, system acquisitions, planning, and engineering.
5

6 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

7 A. A detailed description of my professional experience is provided in Appendix A of this
8 Testimony. In summary, I have over 43 years' experience in the planning, design,
9 construction, and operation of water and wastewater utility systems. I have worked for a
10 Federal regulatory agency, a large investor-owned water and wastewater utility, a firm
11 engaged in contract operations of municipally owned water and wastewater utilities, and
12 in engineering and operational consulting for the water and wastewater industry. During
13 my career, I have been responsible for all operations functions including regulatory
14 compliance, water production, distribution, and maintenance services as well as wastewater
15 collection and treatment. I have evaluated numerous water and wastewater acquisitions, and
16 I have advised clients on the sale or acquisition of these systems.
17

18 **2. SCOPE AND PURPOSE OF TESTIMONY**

19 **Q. MR. WOODS, PLEASE DESCRIBE YOUR AREA OF RESPONSIBILITY IN THIS**
20 **MATTER.**

21 A. The City engaged me to review the Cooperation Agreement Between the City of Pittsburgh
22 and the Pittsburgh Water and Sewer Authority dated October 3, 2019 (the "2019

1 Agreement”) and offer an opinion regarding the equity of the cost sharing strategies
2 embodied in the 2019 Agreement.

3

4 **Q. WHAT MATERIALS HAVE YOU REVIEWED IN DISCHARGING THIS**
5 **ASSIGNMENT?**

6 A. I have reviewed the Capital Lease Agreement dated July 15, 1995, the Cooperation
7 Agreement dated June 15, 1995, and the 2019 Agreement. I have also reviewed the audits
8 for the City titled City of Pittsburgh, Pennsylvania, Comprehensive Annual Financial Report,
9 Year Ended December 31, 1995 and the City of Pittsburgh, Pennsylvania, Comprehensive
10 Annual Financial Report, Year Ended December 31, 2019. In addition, I reviewed the Direct
11 Testimony of Ms. Debbie M. Lestitian, which is marked as PWSA St. No. 1 in this matter
12 and the Supplemental Testimony of Mr. Harold J. Smith, which is marked as PWSA St. No.
13 7-SD in Docket Nos. R-2020-3017951 and R-2020-3017970. I have also reviewed the
14 testimonial statement of Mr. Daniel Gilman on behalf of the City. Finally, I also reviewed
15 the Commission's Order in Docket Nos. M-2018-2640802 and M-2018-2640803 and the
16 Commonwealth Court Decision in Lloyd v. Pennsylvania Public Utility Commission.

17

18 **Q. ARE YOU SPONSORING ANY EXHIBITS?**

19 A. No.

20

1 referenced by City witness Daniel Gilman, would retroactively frustrate the total overall
2 deal negotiated by two sophisticated parties. For example, as Mr. Gilman noted, if you
3 strip away the City's rights to water from a Cooperation Agreement, then the Lease amount
4 would have been higher to offset what the City would be required to pay. My point is it
5 would be unfair and inadvisable to ignore that the two negotiated documents are
6 intertwined and interdependent to effectuate a negotiated transition, or in fact, an
7 acquisition of the systems by PWSA.

8 Under the terms of the 1995 Cooperation Agreement, City Water Department employees
9 became employees of the PWSA. As a result, the PWSA assumed various obligations from
10 the City. The City and the PWSA provided various services to each other in accordance
11 with the Cooperation Agreement, and the PWSA reimbursed the City for direct and indirect
12 costs attributed by the City to the operation and maintenance of the System.

13 Also, under the terms of the 1995 Cooperation Agreement, PWSA provided up to 600
14 million gallons of water annually for the City's use without charge. This volume of water
15 was available to the City for its use at facilities like the City public swimming pools and
16 the uses of its instrumentalities, such as the Pittsburgh Zoo. Also, the PWSA assumed the
17 City's obligation for the cost of subsidizing water service to those residents of the City
18 situated beyond PWSA's service area and served by Pennsylvania American Water
19 Company, so that those water users pay charges that mirror the rates of PWSA.

20 The City has retained the pension obligation for PWSA's employees who participate in the
21 City's Municipal Pension Plan. The extent of PWSA's participation in such obligation with
22 respect to these employees whose membership continued upon becoming employees of

1 PWSA is determined by the shared interpretation of the City and the PWSA of the intent
2 of the Cooperation Agreement.

3 The 1995 Cooperation Agreement obligated PWSA to set rates at levels sufficient to
4 recover the cost of operations and maintenance of the System and to recover the debt
5 service obligations of PWSA. The credit and taxing power of the City was not to be used
6 to satisfy any Authority indebtedness and the City was no longer responsible for any
7 Authority debt payments. While the City owns the assets, it continues to bear legal and
8 business risk for any claims and lawsuits brought against the City or Authority relative to
9 the systems, service to other customers, and assets. This situation will continue up and
10 through 2025 when the ownership would change to PWSA. In a real sense, the City is
11 distinguishable as a customer or user of PWSA and bears financial exposure and risk that
12 no other customer has to bear. Given this, the City is unique, and this is one of many
13 reasons for treating the City different than other customers because it is different.

14 The term of the 1995 Cooperation Agreement was 40 years from the effective date, which
15 was January 1, 1995. Both parties had a right to terminate the agreement with 90 days'
16 notice to the other.

17 On February 4, 2019, PWSA's Board issued a resolution that the existing Cooperation
18 Agreement shall be terminated in accordance with the terms of the agreement, 90 days after
19 the approval of the resolution. City and PWSA officials have collaborated on and
20 negotiated a new Agreement, the 2019 Agreement, which has been filed with the
21 Commission for review in this proceeding.

1 The 1995 Capital Lease Agreement (the "1995 Lease") remains in effect. The 1995 Lease
2 commenced on July 15, 1995 and has a term of 30 years. The 1995 Lease terminated the
3 prior 1984 Lease and Management Agreement. The 1995 Lease established a series of
4 System rental payments due from the PWSA to the City totaling \$101,416,974.60. This
5 sum included \$5,399,725 in prepayments plus payments of \$35,000,000 to be made by July
6 25, 1995, two payments of \$20,000,000 each to be made on January 2, 1996 and August 1,
7 1996, and a final payment of \$21,017,249.60 due on January 2, 1997. It is my
8 understanding that these payments have been made. The lease terminates on September 1,
9 2025, and on that date, PWSA has the option to acquire the System for the additional
10 payment of one dollar (\$1.00).

11 The 1995 Lease and the 1995 Cooperation Agreement comprise the terms and conditions
12 whereby the PWSA would acquire the System from the City. It is my opinion that the two
13 agreements, taken together, are the result of careful negotiations between two sophisticated
14 parties that carefully balance costs and expenses borne by each party and ultimately the
15 City taxpayers and all PWSA rate payers.

16

17 **Q. IS IT YOUR UNDERSTANDING THAT THE CITY IS THE OWNER OF THE**
18 **SYSTEM ASSETS COMPRISING THE PWSA?**

19 A. Yes, I believe that is correct. The City financial audits recognize that the City appoints the
20 Board of PWSA, and the City includes PWSA as a component unit in its financial
21 statements.

22

23 **Q. WHAT IS THE COMPOSITION OF THE PWSA BOARD?**

1 A. The PWSA Board has a maximum of seven members, consisting of one City Council
2 member, the City Treasurer, the City Finance Director, and four members chosen by the
3 Mayor. Currently, there are six sitting Board members. Board members have a
4 responsibility to act in the interests of the PWSA.

5
6 **Q. AS A COMPONENT UNIT, HOW ARE THE ASSETS OF THE PWSA**
7 **REFLECTED IN THE CITY'S FINANCIAL STATEMENTS?**

8 A. The financial statements separately identify component units like PWSA. PWSA is
9 reflected on the Combining Statement of Net Position with \$998,895,000 in utility assets,
10 \$12,181,000 in non-utility assets, and \$135,287,000 in construction work in progress.
11 Accumulated depreciation amounts to \$315,785,000. Thus, the net capital asset value is
12 \$830,578,000.¹

13
14 **Q. HOW HAS THE NET CAPITAL ASSET VALUE CHANGED SINCE 1995 WHEN**
15 **THE 1995 LEASE WAS EXECUTED?**

16 A. At the start of 1995, the net capital asset value of PWSA was \$172,456,000.² Given that
17 annual depreciation of these assets was recorded at \$4,206,000, the current depreciated
18 value of the 1995 assets can be estimated at \$67,306,000, and at the term of the 1995 Lease,
19 this value will be further reduced to \$46,276,000. The current net capital asset value
20 reflected on the City's component unit balance sheet shows the significant investments
21 made by PWSA since 1995. However, it is apparent that the PWSA has benefited from

¹ City of Pittsburgh Pennsylvania, Comprehensive Annual Financial Report for the Fiscal Year Ended December 31, 2019; Fund Financial Statements; p. 18.

² City of Pittsburgh Pennsylvania, Comprehensive Annual Financial Report for the Fiscal Year Ended December 31, 1995; p. 139.

1 the 1995 Lease simply because it was able to acquire the use of \$172,456,000 in net utility
2 assets at a bargain price of \$101,416,975.

3

4 **Q. IS THE RELATIONSHIP BETWEEN THE CITY AND PWSA TYPICAL OF**
5 **OTHER MUNICIPAL UTILITIES AUTHORITIES?**

6 A. Yes. The City is the owner of the assets and it appoints the governing body of its Authority.
7 In addition, both the PWSA and the City take advantage of certain shared services and
8 functions to the mutual benefit of taxpayers and ratepayers. In other circumstances, it is
9 common to find that the Authority and creating municipality share services and expenses
10 for things like insurance, fleet maintenance, energy purchasing, pension and benefit
11 programs, and other support services. It is also common to see arrangements where the
12 utility authority does not isolate public fire protection as a cost center. In such cases, public
13 fire hydrant charges are not billed to the creating municipality. Similarly, water use at
14 municipal facilities is often an authorized but unbilled use.

15

16 **Q. HAS THE COMMISSION PROVIDED ANY GUIDANCE TO THE CITY**
17 **REGARDING THE RELATIONSHIP THAT SHOULD EXIST BETWEEN THE**
18 **CITY AND PWSA GOING FORWARD?**

19 A. Yes. While I am advised by counsel that there may be legal defects in the Commission's
20 Opinion and Order in Dockets M-2018-2640802 and M-2018-2640803, the Commission
21 noted that the Parties agreed that the following principles should be incorporated in the
22 new Cooperation Agreement: (a) any payments to the City must be just, reasonable, and
23 substantiated; (b) the City and the PWSA's relationship should be conducted on an arm's

1 length "business-like" basis; and (c) services provided by the City to the PWSA, and vice
2 versa, should be identified with detailed breakdown and be charged based on the related
3 cost of service.³

4
5 **Q. DID THE COMMISSION ADDRESS ANY OTHER AREAS REGARDING THE**
6 **RELATIONSHIP BETWEEN THE CITY AND PWSA?**

7 A. Yes, in Dockets M-2018-2640802 and M-2018-2640803, the Commission also addressed
8 the existence of unmetered City accounts and properties, and directed PWSA to include
9 the cost of meter installation in its capital improvement programs and to consider and
10 propose the implementation of a municipal customer class with both flat and metered rates.
11 This would allow PWSA to begin billing the City for service at least on a flat rate basis
12 pending the installation of meters at these locations.

13
14 **Q. IS THERE ANYTHING IN THE RECENT FINANCIAL HISTORY OF THE CITY**
15 **THAT YOU FEEL IS RELEVANT TO THE ANALYSIS AND REVIEW OF THE**
16 **2019 AGREEMENT?**

17 A. Yes. According to the City's 2019 Financial Report, it is a fact that the City has only
18 recently (February 13, 2018) exited Act 47⁴ Status and shed its designation as a financially
19 distressed municipality.⁵ This is a significant accomplishment. However, the City finds
20 itself challenged, as many communities are, by the Covid-19 Pandemic, a condition that

³ Order and Opinion in Dockets M-2018-2640802 and M-2018-2640803, p. 31.

⁴ The Municipalities Financial Recovery Act, Act 47 of 1987, was enacted to provide a broad-based program of fiscal management oversight, technical assistance, planning, and financial aid to municipalities experiencing severe fiscal distress. Pittsburgh has operated under Act 47 status for 14 years, entering on December 29, 2003.

⁵ City of Pittsburgh, Pennsylvania, Comprehensive Annual Financial Report, Year Ended December 31, 2019, Management's Discussion and Analysis, p. xiii.

1 has caused the Governor to declare a state of Fiscal Emergency in at least one other
2 Pennsylvania city.⁶ None of this appears to have been considered in the Commission
3 Orders or by the Bureau of Investigation & Enforcement, who I understand is supposed to
4 determine what is best for all sectors of the public, which would include the City.

5
6 **4. THE 2019 COOPERATION AGREEMENT**

7 **Q. HAVE YOU REVIEWED THE 2019 COOPERATION AGREEMENT AND DO**
8 **YOU BELIEVE THAT IT IS FAIR AND REASONABLE?**

9 A. Yes. I have reviewed the 2019 Agreement, and it is my opinion that it strikes a fair and
10 reasonable balance of the needs of the City and its taxpayers and the PWSA and its
11 ratepayers. I believe that the 2019 Agreement maintains the *quid pro quos* the parties
12 negotiated and are willing to accept to effectuate a transfer of the System to PWSA.

13
14 **Q. DO YOU BELIEVE THAT THE 2019 AGREEMENT INCORPORATES THE**
15 **PRINCIPLES DETAILED BY THE COMMISSION IN ITS OPINION AND**
16 **ORDER IN DOCKETS M-2018-2640802 AND M-2018-2640803?**

17 A. Yes, I believe that the 2019 Agreement establishes a relationship between the City and
18 PWSA that is founded on a business-like approach to transactions between the two entities
19 and that the 2019 Agreement will facilitate the PWSA transition to full compliance with
20 Commission rules and policies. Furthermore, I believe that the principles embodied in the
21 2019 Agreement will provide a fair and reasonable guide to the ongoing relationship
22 between the City and PWSA that will need to exist beyond the termination of the 1995

⁶ City of Chester Declaration of Fiscal Emergency and Concise Statement of Facts (2020-04-13).

1 Lease in September 2025. At that point in time, PWSA will continue to exist as a
2 Pennsylvania Municipal Utilities Authority created by the City.

3
4 **Q. PLEASE EXPLAIN YOUR LAST STATEMENT FURTHER.**

5 A. The City is the incorporating municipality for PWSA and in fact, has recently acted to
6 amend and extend the Articles of Incorporation for the PWSA. Effective February 6, 2020,
7 the City approved an Amendment to the Articles of Incorporation of the PWSA to extend
8 its term of existence to a date that is fifty (50) years from the date of the approval of the
9 Amendment to Articles of Incorporation by the Secretary of the Commonwealth of
10 Pennsylvania and adding stormwater planning, management, and implementation to the
11 purposes of the Authority. The City will continue to exercise a governance function over
12 the PWSA by addressing issues such as this, and it will continue to be the entity responsible
13 for appointing members of the PWSA Board. In addition, there are numerous day-to-day
14 operational issues affecting both the City and PWSA that require coordination and present
15 opportunities for synergies that will benefit taxpayers and ratepayers. The 2019 Agreement
16 provides a fair and reasonable framework between the City as the incorporating
17 municipality and PWSA as the water and sewer service provider.

18
19 **Q. HOW DOES THE 2019 AGREEMENT BROADLY DEFINE THE**
20 **RELATIONSHIP BETWEEN THE CITY AND PWSA?**

21 A. The recitals of the 2019 Agreement set out broad principles of agreement between the two
22 entities. For example, the recitals memorialize the agreement of the City and PWSA to
23 ensure that the System remains under public ownership and control. The recitals also

1 confirm the intent of both parties to ensure that payments between the parties are based on
2 actual, verifiable, direct expenses developed in accordance with customary utility practice.
3 Additionally, the 2019 Agreement memorializes the intent of the parties to cooperate on
4 projects that may impact one another. For example, PWSA sewer or water line
5 construction, valve replacements, manhole restoration and service renewals and
6 replacements all have the potential to adversely impact City street and right-of-way
7 maintenance activities. Likewise, City street paving can impact PWSA asset planning and
8 renewal programs. The 2019 Agreement also defines the PWSA System and notes the
9 existence of combined sanitary and storm sewers, separate sanitary and stormwater
10 collection and conveyance systems as well as water supply, treatment, transmission, and
11 distribution facilities and the role of PWSA in maintaining, operating, renewing, and
12 replacing these assets.

13
14 **Q. DOES THE 2019 AGREEMENT OBLIGATE PWSA OR THE CITY TO**
15 **PURCHASE SERVICES, ONE FROM THE OTHER?**

16 A. No. While the Section 3 of the 2019 Agreement enumerates certain services that may be
17 provided by the City to PWSA, for example, PWSA is not obligated to purchases these
18 services exclusively from the City.

19
20 **Q. DOES SECTION 3 OF THE 2019 AGREEMENT OBLIGATE PWSA TO PAY FOR**
21 **50% OF THE COST OF CITY STREET SWEEPING?**

22 A. Yes, it does.

1 **Q. DO YOU BELIEVE IT IS FAIR AND REASONABLE TO ALLOCATE 50% OF**
2 **THE STREET SWEEPING EXPENSE TO PWSA?**

3 A. Yes, especially given PWSA's responsibilities with respect to the operation and control of
4 Combined Sewers and PWSA's responsibilities for stormwater management. Given that
5 combined sewers and storm sewers drain stormwater runoff from streets and given that the
6 USEPA minimum controls for combined sewer overflows ("CSO") and permitting
7 requirements for Municipal Separate Storm Sewer Systems (commonly called "MS4"
8 systems), it would have been reasonable for 100% of the cost of street sweeping, including
9 the capital cost of street sweeping equipment and vehicles, to be assigned to PWSA. Street
10 sweeping is one of the principal means of capturing plastics, floatables, and other solids
11 before these objectionable materials become part of the water flow regime and must be
12 addressed through CSO controls or otherwise recovered in the receiving streams. In this
13 case, I believe the 2019 Agreement provides a clear benefit to PWSA and its ratepayers by
14 shifting 50% of the cost to City taxpayers.

15
16 **Q. WHAT IS THE 2019 AGREEMENT DOING TO ADDRESS THE MAINTENANCE**
17 **AND OPEATION OF WATER AND SEWER MAINS AND SERVICE LATERALS?**

18 A. Historically, the City maintained these assets and did not bill itself for work done. With
19 respect to City properties, the 2019 Agreement moves to put the City on the same footing
20 as other similar customers while recognizing the need to transition in a gradual but
21 deliberate way. By 2025, the City will be treated in the same fashion as typical commercial
22 customers in that the City will be fully responsible for the operation, maintenance, repair,
23 and replacement of water and sewer service laterals. At present (2020), these costs are

1 absorbed by PWSA in the fashion of the traditional methods used by the City and then by
2 PWSA. In 2021, the City will begin sharing in these costs at a rate of 20% of the actual
3 cost and each year thereafter the allocation to the City will increase by 20% until the full
4 cost is borne by the City in 2025, the year that the 1995 Lease expires and PWSA takes
5 full ownership of the System assets.

6
7 **Q. IS IT APPROPRIATE TO GRADUALLY TRANSITION, IN THE INCREMENTS**
8 **DETAILED IN THE 2019 AGREEMENT, FROM PWSA BEARING THE COST**
9 **OF SERVICE LATERAL MAINTENANCE TO THE CITY BEARING THIS COST**
10 **IN 2025?**

11 A. The use of a deliberate but gradual transition to City funding of service lateral maintenance
12 for City properties is appropriate. This will put the City on the same footing as other PWSA
13 commercial customers in a short period of time. The parties to the 2019 Agreement have
14 negotiated and agreed to a specific timeline that is realistic, achievable, and avoids that
15 potential budgetary shock of suddenly shifting this cost to the City.

16
17 **Q. IS IT TYPICAL FOR CUSTOMERS TO BEAR THE COST OF SERVICE LINE**
18 **MAINTENANCE, REPAIRS, AND REPLACEMENTS?**

19 A. Generally speaking, where investor-owned utilities are concerned, the cost of service line
20 maintenance, repair, and replacement is divided at the property line. That is, the utility is
21 responsible for the portion of the service line that exists in the public right-of-way, and the
22 customer is responsible for the portion of the line on private property (or municipal
23 property in the case of a public customer). In municipal authority systems and municipal

1 water department systems, the point of demarcation that I have described for investor-
2 owned utilities is also followed, but this is not a universal practice. In many cases, the
3 customer owns and maintains the entire service line from the customer's premises to the
4 water or sewer line in the street. It is my understanding that PWSA uses a hybrid approach
5 where the investor-owned model is followed for residential services, but the municipal
6 approach is followed for commercial customers. Given that this is PWSA's customary
7 practice, the approach taken in Section 5.2 of the 2019 Agreement is proper, just, and
8 reasonable.

9
10 **Q. ARE THERE ANY EXCEPTIONS TO THIS PRACTICE?**

11 A. Yes, in Saw Mill Run (Section 5.3 of the 2019 Agreement), the municipal model is
12 employed and the customer is responsible for service lateral maintenance and repairs. This
13 reflects an arrangement in the 1995 Cooperation Agreement wherein the City, not the
14 Authority, was responsible for the maintenance, repair, and replacement of the mains and
15 laterals in Saw Mill Run. By contrast, in the 2019 Agreement, PWSA is responsible for
16 the sewer and water mains, as they are throughout the System, but the customers will be
17 responsible for the full extent of the service laterals.

18
19 **Q. DOES SECTION 5.2.1 ADDRESS UNMETERED CITY SERVICES?**

20 A. Yes. This section of the 2019 Agreement indicates that City service lines that are not
21 metered will be provided with a meter. Further, this section of the 2019 Agreement
22 indicates that the City will share equally in the cost of metering these services. This would

1 have brought the combined resources of the City and PWSA to bear on the problem of
2 numerous unmetered City services.

3

4 **Q. HAS THE COMMISSION ISSUED AN ORDER THAT IMPACTS THIS PORTION**
5 **OF THE AGREEMENT?**

6 A. Yes, in Docket Nos. M-2018-2640802 and M-2018-2640803, the Commission noted that
7 PWSA would be discriminating against its non-City customers by sharing the meter
8 installation cost with the City. Thus, unless the Commission reverses this decision and
9 allows the 2019 Agreement to stand, the cost of meter installation will need to be incurred
10 solely by PWSA and recovered from all of its customers.

11

12 **Q. WHAT IS THE IMPORT OF SECTION 6.1 OF THE 2019 AGREEMENT?**

13 A. Historically, the difference in water rates and charges from Pennsylvania American Water
14 Company and PWSA was material. Pittsburgh residents and businesses located in 29th,
15 30th, 31st, and 32nd wards and portions of the 16th, 18th, 19th, 20th, and 28th wards served
16 by Pennsylvania American Water Company paid more for service than similar customers
17 elsewhere in Pittsburgh who are served by PWSA. The City and PWSA subsidized the
18 cost of service in the Pennsylvania American Water Company service area. That
19 arrangement is described in Section 6.1 of the 2019 Agreement.

20

21 **Q. IS SECTION 6.1 OF THE AGREEMENT STILL EFFECTIVE?**

1 A. It is my understanding and belief that the Water Rate Subsidy Agreement, which was
2 assigned to PWSA, has now been canceled. This section of the 2019 Agreement is no
3 longer of any effect.

4
5 **Q. PLEASE EXPLAIN SECTION 6.2 OF THE 2019 AGREEMENT.**

6 A. This portion of the 2019 Agreement addresses the free allowance for water historically
7 enjoyed by the City and its instrumentalities, which was part of the overall transition terms
8 and conditions contained in the June 1995 Cooperation Agreement and the July 1995
9 Lease. In addition, this section of the 2019 Agreement, while it contains concessions by
10 the City from the 1995 Cooperation Agreement, provides for a deliberate and gradual
11 transition to full cost pricing for metered service to City properties, like the public City
12 swimming pools and parks, and to City affiliates like the Pittsburgh Zoo, which are
13 collectively referred to as Third Party Users. First, effective January 1, 2020, the free
14 allowance of 600 million gallons per year has been eliminated by the 2019 Agreement.
15 The provision of a finite annual quantity of water without charge from PWSA to the City
16 between 1995 and the end of 2019 should be viewed together with the terms of the 1995
17 Lease Agreement that gave PWSA access to and control of the System at a bargain price.
18 While the 2019 Agreement reallocates *quid pro quos* in the original interdependent 1995
19 Cooperation Agreement and the 1995 Lease, it provides reasonable and appropriate
20 gradualism under the unique circumstances here. This is the result of business-like
21 negotiations between the parties. This is preferable to a third party picking and choosing
22 which key terms of this agreement they dislike and disturbing the agreement to a point
23 where it is unacceptable to either or both parties. I would note that the 2019 Agreement is

1 presently written to survive past the gradualism period. If the City were not to provide the
2 services and opportunities for cost savings found in the 2019 Agreement, that ultimately
3 would be bad for ratepayers. Many of PWSA's customers are also City taxpayers who
4 could be subject to higher taxes on the tail of the City's emergence from Act 47 and the
5 depressed tax collections or revenues due to the Covid-19 shutdowns or reductions in
6 business.

7 After eliminating the 600 million gallons per year free allowance for the City, Section 6.2
8 goes on to describe a gradual and deliberate approach to phasing-in the rates to be paid by
9 the City for metered service. The 2019 Agreement sets out a schedule of declining
10 discounts wherein the City would pay 20% of the established rate in 2020, 40% of the
11 established rate in 2021, and so on, until the full rate is charged in 2024, nearly 2 years
12 before the 1995 Lease expires in September 2025 and PWSA becomes the owner of the
13 leased assets. In my opinion, I can say with certainty as an expert in my field that this
14 phase-out is just and reasonable under the unique facts presented and does not constitute
15 an unreasonable preference or unreasonable discrimination given the facts and
16 circumstances here.

17

18 **Q. DOES THE EXISTING PWSA TARIFF HAVE A RATE FOR MUNICIPAL**
19 **CUSTOMERS?**

20 A. No, it does not. It is my understanding and belief that the parties to the 2019 Agreement
21 assume that the existing commercial rates would apply to City connections and that the
22 graduated scale in Section 6.2 would apply to the Commercial rates.

1 **Q. IN YOUR OPINION, IS THE GRADUATED IMPLEMENTATION SCALE IN**
2 **SECTION 6.2 JUST AND REASONABLE?**

3 A. Yes, I believe it is fair, just, and reasonable. It is not an unreasonable preference or
4 unreasonable discrimination due to the circumstances here. Over its history, the City of
5 Pittsburgh Water Department and more recently, the PWSA have not charged the City for
6 service. This is a typical municipal practice. It is also comparable to investor-owned
7 utilities that record use in utility-owned facilities as an authorized but unbilled use.
8 However, given that the PWSA will become the owner of all System assets in 2025 and
9 that PWSA is now regulated as a result of Act 65 of 2017, it is reasonable to take
10 affirmative steps to comply with the Public Utility Code. Section 6.2 of the 2019
11 Agreement provides a deliberate means of moving the City from a point where it has not
12 paid for water service to a point where the City properties are billed the full rate for service
13 provided. The 2019 Agreement embodies the principle of gradualism by moving the
14 effective rates charged by PWSA from zero to the full rate in a relatively short period of
15 time of only five years.

16
17 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY THE TERM “GRADUALISM.”**

18 A. Gradualism is a critical principle of rate making which attempts to balance the potential
19 adverse effects of large and dramatic changes in rates with the need to set rates that recover
20 the revenue requirement from the classes of customers who cause the cost. In *Lloyd v. Pa.*
21 *PUC*, 904 A.2d 1010, 1015 (Pa. Cmwlth. 2006) (*Lloyd*), “rate shock” is a phrase used to
22 describe the public outcry associated with rate increases, while “gradualism” is the concept

1 that rates should be gradually increased over longer periods of time to prevent customers
2 from experiencing rate shock.⁷

3

4 **Q. CAN YOU GIVE AN EXAMPLE OF THE WAY IN WHICH THE COMMISSION**
5 **HAS APPLIED GRADUALISM IN RATE SETTING?**

6 A. Yes. In its most recent decision related to Aqua Pennsylvania Water base rates, the
7 Commission acknowledged that the settled rate design embodied the principle of
8 gradualism in the way in which it continued a long-running effort to consolidate rate groups
9 serviced by the Company.⁸ In this matter, the Commission agreed to the consolidation of
10 22 water rate divisions into 14 rate divisions and of those 14, twelve divisions were grouped
11 into three Rate Zones because of their similarity in rate design. The rates of all of the rate
12 divisions that will continue to exist under the Settlement Rates have been moved closer to
13 each other and to the Rate Zone 1 in order to facilitate further consolidation with the Main
14 Division in future cases. The Order in the Aqua base rate case was issued on May 9, 2019.
15 The base rates that were adjusted by the Commission's Order on May 9, 2019 were put in
16 effect on June 8, 2012. Aqua has publicly stated that it will most likely file a request with
17 the Commission to adjust base rates in 2021.⁹ So, from this we can see that the

⁷ From the Lloyd decision, "gradualism" is a principle of rate design that rates will be gradually increased to avoid "rate shock" in this case caused by transition from capped rates to rates set more closely to the traditional ratemaking process by "gradually" reducing rate of return differentials between the classes. Large rate increases have the potential to cause "rate shock" among customers. Technically, rate shock applies when a rate increase is associated with a significant drop in usage, reflecting the unwillingness or inability of customers to pay for those services. Due to the inelastic demand for essential services, such as utilities, any decrease in usage is minor and transitory. There is a non-technical definition of "rate shock," which is used to describe the public outcry associated with rate increases. To mitigate both forms of rate shock, the remedy is "gradualism," i.e., phasing in rates or closing rate differentials over a longer period of time allowing consumers to gradually make the adjustments in the "elastic" part of their spending so as to pay for increased utility costs, not to mention lessening the pressure on the Commission and the utilities to dampen rate increases."

⁸ Opinion and Order in Docket R-2018-3003558 at Page 58: "(13) the agreement that Aqua's revenue allocation and rate design will be done in such a way as to move all classes closer to their cost of service consistent with the principle of gradualism."

⁹ Joint Petition for Settlement in Docket A-2016-2580061 at Page 6, Para. F.

1 Commission recognizes that the consolidation of rates, with the attendant moves closer to
2 the actual cost of service for each rate class and group, are taken in discrete steps and
3 sometimes over many years. In Aqua Pennsylvania's case, this occurred in 2012, 2019,
4 and will likely continue in 2021.

5
6 **Q. HOW DOES THIS COMPARE WITH WHAT THE PARTIES TO THE 2019**
7 **AGREEMENT HAVE NEGOTIATED?**

8 A. The City and PWSA have negotiated a definitive schedule that will move the City from a
9 point of receiving free service to paying a full cost rate in only five years. The steps are
10 graduated and designed to mitigate the rate shock on the City that would otherwise occur
11 if the full Commercial rates were to be applied at once as a result of the ongoing rate
12 proceeding.

13
14 **Q. ARE YOU AWARE THAT THE COMMISSION HAS ISSUED AN ORDER THAT**
15 **REJECTS THE CONCEPT OF A DISCOUNTED RATE FOR THE CITY?**

16 A. Yes, I understand that the Commission has issued an Order in Dockets M-2018-2640802
17 and M-2018-2640803, at the behest of the Bureau of Investigation and Enforcement
18 (BI&E), that rejected a stepped-billing approach while this Section 507 Proceeding was
19 pending. The Order also opined that PWSA should propose a separate municipal rate class
20 similar to that found in Pennsylvania American Water Company's tariff.

21
22 **Q. HAS THE PWSA PROPOSED A MUNICIPAL RATE?**

1 A. In the Supplemental Testimony of Harold J. Smith in Dockets R-2020-3017951 and R-
2 2020-3017970, PWSA has in fact proposed a distinct municipal rate that would address
3 both metered and flat rate service.

4
5 **Q. DO YOU BELIEVE THAT THIS IS A REASONABLE ALTERNATIVE TO WHAT**
6 **HAS BEEN PROPOSED IN THE 2019 AGREEMENT?**

7 A. First, I believe it would be preferable to leave the 2019 Agreement, which was negotiated
8 at arms-length between the effected parties, intact. As in any negotiation, the parties have
9 the ability to fully understand their positions and balance competing objectives in ways
10 that outsiders cannot possibly hope to appreciate. A concession by PWSA to agree to a
11 five-year rate phase-in could possibly have been offset by a concession by the City to pay
12 for half of the metering cost for un-metered properties. Those of us who were not a part of
13 that negotiation will never fully know the balancing that occurred in the negotiation nor
14 will we be able to appreciate the full impact of eliminating one provision in isolation.

15 Having said that, I have reviewed Mr. Smith's proposal and I believe it is a reasonable
16 attempt to address the objections raised by BI&E in Docket Nos. M-2018-2640802 and M-
17 2018-2640803 while also placing the parties in a position similar to that created by the
18 2019 Agreement with respect to metered water and sewer rates. If Mr. Smith's proposal is
19 adopted by the Commission in Docket Nos. R-2020-3017951 and R-2020-3017970, the
20 metered billings to the City will be comparable to those that I believe would have been
21 anticipated by the 2019 Agreement. In addition, the City will be billed a flat rate for
22 unmetered accounts in 2021 at rates that will generate an additional \$280,596 in flat rate
23 water revenues and an additional \$151,394 in flat rate sewer revenues. This represents an

1 additional \$431,990 and the this will certainly impact the City's 2021 budget. As Mr.
2 Gilman has testified in his statement, this or a flash-cut to full cost of service-based rates¹⁰
3 could cause the City not to be able to open or run many programs, such as its public
4 swimming and spray pools or facilities, kids sports facilities, and playgrounds. Many of
5 these facilities are relied upon by low-income City residents who cannot afford private
6 pools or country clubs. Also, as Mr. Gilman recognizes, many City water-dependent
7 facilities, such as the zoo and aquarium, can be jeopardized absent the phase-in in the
8 Cooperation Agreement. Mr. Gilman also notes many non-residents from the surrounding
9 area visit many of these water dependent City facilities, such as the zoo and the aquarium.
10 There appears to have been no investigation by BI&E of the potential for bad consequences
11 of its positions to the City and its residents, which are part of the public interest BI&E
12 represents. The consequences of BI&E's positions are described more fully by Mr. Gilman
13 and these important facts need to be part of the record considered by the Commission.

14
15 **Q. WOULD YOU PLEASE COMMENT ON SECTION 9 OF THE 2019**
16 **AGREEMENT.**

17 A. Section 9 appears to be an attempt by the parties to further the concept that PWSA is an
18 independent Commission-regulated utility providing water and sewer service in the City.
19 Investor-owned utilities providing service in the City would, of course, be subject to the
20 Public Utility Realty Tax ("PURTA") and would remit payments to the Pennsylvania
21 Department of Revenue. The amounts would be redistributed to the City as the local taxing

¹⁰ According to the Supplemental Testimony of Mr. Harold J. Smith, the full cost of water service based on the Adjusted COSS is \$4,000,870 (Schedule HJS-14W) and the full COSS revenue requirement for sewer service is \$2,288,276 (Schedule HJS-13WW). A flash-cut to these rates, as proposed by BI&E, would result in an additional charge to the City of \$4,636,729 over present rate revenues (\$1,652,417). PWSA St No 7S-D.

1 authority. PURTA is levied against certain entities furnishing utility services regulated by
2 the Commission as PWSA is now subject to regulation. The Commonwealth imposes this
3 tax on public utility realty in lieu of local real estate taxes. Public utilities providing sewage
4 services and municipal authorities furnishing utility service are exempt from the tax.
5 Section 9 of the 2019 Agreement is predicated on the concept that PWSA's water
6 operations would be subject to PURTA because PWSA is regulated by the Commission.
7 In addition, the parties recognize that PWSA had not paid PURTA in the past and they
8 have agreed to a phase-in of the payment similar to the agreement to phase-in water and
9 sewer rates in Section 6.2. This is another area where the parties clearly attempted to apply
10 the concept of gradualism to a cost that had heretofore not been incurred.

11
12 **5. SUMMARY & CONCLUSIONS**

13 **Q. WHAT IS YOUR OVERALL OPINION OF THE 2019 AGREEMENT?**

14 A. I believe the 2019 Agreement was a fair, just, and reasonable effort to balance a number of
15 competing needs in a way that expeditiously moves PWSA to full compliance with the
16 Public Utility Code. It is neither an unreasonable preference nor unreasonable
17 discrimination given the facts and circumstances and bad consequences that could result
18 from alterations to the 2019 Agreement. In addition, I believe the 2019 Agreement
19 recognizes a continuing need for the City and PWSA to cooperate in many respects that
20 will continue after the phase-in and purchase occurs in 2025. Capital improvements
21 undertaken by each entity will impact the assets of the other, so coordination of these
22 activities is well advised and could be jeopardized if the Commission does not preserve the
23 2019 Agreement. The sanitary sewer collection network in the City includes combined

1 storm/sanitary sewers, so proper maintenance of City streets is an essential element of CSO
2 control and compliance. In addition, the PWSA has responsibilities for storm water
3 management and the activities associated with this role will impact the City's compliance
4 with its MS4 Permit. With regard to operations, for the foreseeable future, PWSA
5 employees will continue to benefit from being part of the City's pension and benefits
6 programs. Both entities will benefit from a shared approach to vehicle maintenance and
7 operations (e.g., fuel purchases).

8
9 **Q. IN YOUR OPINION DOES THE 2019 AGREEMENT EMBODY THE**
10 **PRINCIPLES OUTLINED IN THE COMMISSION'S ORDER IN DOCKET NOS.**
11 **M-2018-2640802 AND M-2018-2640803?**

12 A. Yes, the 2019 Agreement ensures that: (a) any payments to the City will be just, reasonable,
13 and substantiated; (b) the City and the PWSA's relationship will be conducted on an arm's
14 length "business-like" basis; and (c) services provided by the City to the PWSA, and vice
15 versa, should be identified with detailed breakdown and be charged based on the related
16 cost of service.

17
18 **Q. DOES THE 2019 AGREEMENT PROMOTE GRADUALISM IN THE**
19 **ESTABLISHMENT OF JUST AND REASONABLE PWSA RATES?**

20 A. Yes. The 2019 Agreement provides for a deliberate, expeditious, and gradual adjustment
21 of metered rates that would be applied to service enjoyed by the City and its Third Party
22 Users. In addition, the 2019 Agreement provides for a gradual increase in expenses that
23 would be borne by PWSA and it also provides for the sharing of capital expenses for meter

1 installations. These capital expenses would normally be borne by PWSA and recovered
2 fully in rates charged to all customers.

3

4 **Q. WHAT IS YOUR RECOMMENDATION WITH RESPECT TO THE 2019**
5 **AGREEMENT?**

6 A. It is my recommendation that the Commission accept the 2019 Agreement in its entirety
7 without modification and allow its provisions to be implemented by the City and PWSA.

8

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

10 A. Yes, and I reserve the right to supplement this testimony as this matter proceeds.

**APPENDIX A –
Qualifications Of
Howard J. Woods, Jr., P.E.**

ACCOMPLISHMENTS (CONTINUED)**HOWARD J. WOODS, JR., P.E.**

KEY EXPERIENCE

Mr. Woods has over 43 years of experience in water and wastewater utility engineering and operations. In his career, he has worked for US EPA, engineering consultants, and in numerous senior engineering and operational roles at a large investor-owned utility. His experience is well rounded, covering all aspects of public water and wastewater operations and management, including outsourcing, acquisitions, maintenance, water production, filtration, distribution, water quality, wastewater collection and treatment, regulatory compliance, and safety.

Mr. Woods managed numerous water and wastewater management contracts. He has assisted clients in outsourcing management activities and transferring ownership of complete utility systems. He has advised clients on alternative contracting approaches and reduced operating costs by renegotiating plant operations contracts. He has helped clients reduce operating expenses and he has provided expert testimony in construction arbitrations, contamination incidents, and utility rate and service proceedings.

EDUCATION

Master of Civil Engineering, Water Resources – Villanova University

Bachelor of Civil Engineering (cum laude) – Villanova University

ACCOMPLISHMENTS

- Directed and managed the procurement process leading to the sale of a municipal wastewater system in Southeastern Pennsylvania. The sale of the Upper Dublin Township Sanitary Sewer System will yield \$20,000,000 for a system serving approximately 8,000 connections and having annual revenues of \$3,000,000. Advised the Township on alternative outsourcing and contracting approaches, reduced interim operating expenses by 30% prior to the sale by renegotiating the plant operations contract.
- Prepared an analysis of ownership alternatives for Lower Makefield Township's sanitary sewer collection system. Managed a procurement process that led to the receipt of a \$17 million bid for the potential sale of a system serving 10,700 residential and commercial customers.
- Assessed an existing public private partnership contract and future contracting

ACCOMPLISHMENTS (CONTINUED)

- alternatives for the Jersey City Municipal Utilities Authority (JCMUA). Recommended alternative contract terms and assisted JCMUA in negotiating a new ten-year operations agreement saving approximately \$3,000,000 per year.
- Assisted Greater Ouachita Water Company, a non-profit Louisiana water and sewer utility, in evaluating operating contract alternatives. Provided assistance in identifying qualified operators to be invited to bid a multi-year full-service operating contract. Assisted in evaluating bids and in contract negotiations.
 - Completed an independent assessment of ownership and operating alternatives for the Township of Sparta water utility. The study evaluated current operating and financial conditions of the utility and considered two alternative service delivery approaches: contract operation and a sale of the system to an investor-owned utility.
 - Completed an assessment of the financial and operating impacts of a proposal by a Pennsylvania municipality to dissolve its municipal water and sewer authority. The authority served multiple political subdivisions and dissolution would have resulted in regulation by the Pennsylvania Public Utility Commission. The additional regulatory burdens identified and limitations on municipal financing capacity resulted in a recommendation to retain authority ownership and operations.
 - Completed an analysis of ownership alternatives for the Bristol Township Sewer Department. Reviewed capital needs and financing arrangements, rate structure and system revenues, operational costs, and regulatory compliance issues. Assessed potential interest in the acquisition of the system by other municipal and investor-owned entities and assessed the possible impact of a sale on rates and service quality. The study recommended retention of the system by the Township and offered recommendations to reduce costs and improve staffing levels.
 - Completed the assessment of a potential water utility acquisition by a Pennsylvania Municipal Authority. Assisted the Authority in developing a bid proposal for the acquisition and assessing the impact on revenue requirement and consumer rates resulting from the acquisition.
 - Provided litigation support to Cornwall Borough Municipal Authority in its efforts to prevent Cornwall Borough from dissolving the Authority. Provided expert testimony on the service and financial impacts of dissolving the Authority. Developed capital plans for the Authority and provided expert testimony regarding the need to construct certain fire protection and other distribution improvements.
 - Completed an assessment of an investor-owned utility offer to acquire the assets of Pennsylvania Municipal Water & Sewer Authority. Evaluated the acquisition and rate proposal, developed independent assessments of the value of the assets consistent with Pennsylvania Act 12, and prepared recommendations for the Authority's use in considering the proposal.
 - Completed an evaluation of the revenue requirement associated with the decommissioning of a wastewater treatment plant and the diversion of wastewater to a

ACCOMPLISHMENTS (CONTINUED)

- regional treatment works for the North Wales Water Authority. Assessed the rate impact to customers of potentially retaining and improving an existing wastewater treatment plant and the rate impact of joining a regional treatment system. The evaluation supported the decision to regionalize the sewage treatment function.
- Developed a risk assessment model for a Pennsylvania Municipal Utilities Authority to allow the Authority to prioritize investments on numerous wells threatened by regional perfluorinated compound contamination. The assessment balanced risk of contamination, cost, and feasibility of providing treatment, the use or regional alternative supplies owned by the Authority and regional interconnections/system acquisitions.
 - Assisted the Banco Gubernamental de Fomento para Puerto Rico, Autoridad para el Financiamiento de la Infraestructura de Puerto Rico and Pricewaterhouse-Coopers in developing a new operating contract for the Puerto Rico Aqueduct and Sewer Authority (PRASA). The contract was developed, bid, and awarded in less than six months, cutting the normal procurement time by nearly two-thirds. The value of the contract was \$300 million per year.
 - Completed an independent assessment of the planning and engineering decision making for a major water treatment plant renovation project undertaken by Aquarion Water Company of Connecticut in Stamford Connecticut. Evaluated process selection decisions, project sizing and regulatory compliance issues, and testified before the Connecticut Department of Public Utility Control on the findings of the evaluation.
 - Completed audits of water production operations and water quality management functions at Aquarion Water Company of Connecticut, Aquarion Water Company of Massachusetts, and Aquarion Water Company of New Hampshire. Assessed operational procedures and staffing levels, reviewed risk management plans including emergency response plans and dam safety programs, evaluated programmed and preventative maintenance systems, and developed recommendations to assist the Company in lowering the cost of service while reducing risk and improving reliability.
 - Completed an audit of the watershed and environmental management functions at Aquarion Water Company of Connecticut. Assessed watershed management, monitoring and operational procedures, reviewed compliance tracking systems, reviewed risk management strategies, and developed recommendations to assist the Company in reducing risk and improving reliability and watershed protection efforts.
 - Completed a management audit of the water distribution function at Aquarion Water Company of Connecticut. Evaluated system monitoring and maintenance practices, assessed the impact of the use of contract maintenance, and construction services to reduce Company workforce levels. Developed recommendations to improve the Company's programmed and preventative maintenance systems, corrosion control procedures, and non-revenue water control programs.
 - Completed a management audit of the engineering and planning functions at Aquarion

ACCOMPLISHMENTS (CONTINUED)

- Water Company of Connecticut. Evaluated the Company's planning practices and procedures and developed recommendations to assure the efficient application of capital to the renewal, replacement, and expansion of the Company's extensive utility plant assets.
- Assisted Greater Ouachita Water Company, a Louisiana non-profit water and sewer utility, in identifying the cause of water quality complaints resulting from poor color removal. Recommended improvements to minimize capital modifications of the chemical feed, filter backwash and spent wash water treatment systems.
 - Completed a Comprehensive Technical Assistance (CTA) project for the City of New Brunswick (NJ) Water Utility. The CTA, which was Ordered to be completed by the New Jersey Department of Environmental Protection, developed operating procedures to rectify numerous performance limiting factors that contributed to several drinking water quality issues and Safe Drinking Water Act Rules compliance issues. Completion of the CTA satisfied a major component of the Consent Order.
 - Provided ongoing technical and operations assistance to the Shelter Island Heights Property Owners Corporation related to the operation and maintenance of the community water and sewer utilities. Developed recommendations for asset maintenance and renewal as well as employee safety.
 - Completed a Vulnerability Assessment for a municipally-owned public water system in northern New Jersey. Organized, planned, and conducted the assessment using the RAM-WSM methodology. Evaluated existing physical protection systems at utility facilities, developed threat assessments and adversary sequence analyses, and prepared recommendations to reduce risk.
 - Completed an energy management evaluation for the Elmira (NY) Water Board and provided operator training on energy management strategies. Recommendations from the study allowed the client to reduce energy expenses by 30% through a series of operational modifications.
 - Completed an energy management audit of the Pittsburgh Water and Sewer Authority and identified strategies for reducing power consumption. The results of this investigation provided the foundation for the Authority and its contract manager to develop and implement more effective maintenance and operations procedures to reduce energy costs.
 - Served as an expert witness in a matter involving the diversion of service by a large commercial customer of Atlantic City Municipal Utilities Authority (ACMUA). Statistically analyzed customer water use and billing records by relating water use variables (e.g. weather, occupancy rates, and restaurant output) to recorded consumption. Identified periods of service diversion and assisted ACMUA in the collection of revenues and penalties due.
 - Served as an expert witness in a matter involving excess billing of a large commercial customer of a New Jersey public utility. Statistically analyzed usage patterns over a

ACCOMPLISHMENTS (CONTINUED)

- ten-year period and identified periods of excess billing. Assisted the customer in negotiating a \$50,000 settlement of the dispute.
- Provided litigation support in a dispute involving cost of service allocations made by Erie City Water Authority (ECWA) in establishing rates covering a ten-year period beginning in 2004. Prepared an expert report addressing the cost allocation methods used by ECWA and demonstrated that the determination of the ECWA revenue requirement was fair and reasonable and that the allocation methods used to assign costs to various rate classes were done using reasonable professional judgment and standard professional care.
 - Provided litigation support in a dispute involving water rates billed by Passaic Valley Water Commission to retail customers in the Borough of Lodi. Reviewed past rate setting practices and related rate covenants in the Lodi water system lease, prepared expert testimony and assisted the Passaic Valley Water Commission in developing rates consistent with the Court's Order.
 - Developed a rate study and assisted in the renegotiation of a sewer service agreement between Ridgefield Borough and Palisades Park Borough. The rate study formed the basis of a settlement of ongoing litigation and provided a cost allocation methodology incorporated into a new service agreement between the municipalities.
 - Developed rate studies for the Village of Ridgewood Water Utility for 2010 through 2016 to satisfy a Court Order to re-evaluate and re-adopt rate resolutions in response to a Complaint by Midland Park, Glen Rock, and Wycoff. Developed allocation factors for shared municipal services and developed the revenue requirement for each year for the Water Utility. Produced a final rate design consistent with the Court Order.
 - Developed a model of the major water resources facilities in the Passaic, Pompton, Ramapo, and Hackensack River Basins that allows the calculation of the safe and dependable yield of the Wanaque/Monksville, Point View, and Oradell Reservoir systems under varying drought conditions. The model is being used by Passaic Valley Water Commission to evaluate long-term water supply management strategies and to plan for future water supply needs.
 - Assisted New York City Department of Environmental Protection in compiling a report on the estimated safe yield of the City water supply reservoir system. A current assessment of safe yield was required by agreement of the Parties to the 1954 US Supreme Court Decree governing the use and export of water from the Delaware River Basin. Provided additional consulting assistance on plans to assure system reliability during planned repairs to the Roundout-West Branch Tunnel, an aqueduct that transports up to 800 million gallons of water per day to the City from the Delaware Basin reservoir system.
 - Developed an analysis of the costs of the Hickory Log Creek Reservoir and the yield sharing arrangements between the City of Canton and the Cobb County-Marietta Water Authority. Developed recommended methods to assess the impact of US Army Corps

ACCOMPLISHMENTS (CONTINUED)

of Engineers operating policies on future operating and capital cost allocations.

- Prepared a long-range water supply needs forecast for the Passaic Valley Water Commission. Analyzed water use patterns within the Commission's retail service area and for over two-dozen large contract customers. Produced population forecasts for the service area and individual water demand forecasts for each contract sale-for-resale customer using statistical and numeric forecasting techniques. The forecast projects total annual demand, average day, maximum month, and maximum day demands and forms the basis for other ongoing facility and operations planning efforts.
- Prepared a long-range water supply needs forecast for the North Wales Water Authority. Analyzed water use patterns within the Authority's retail service and identified the water supply requirement for the Authority's share in a regional water supply system. Produced customer forecasts for the service area and individual water demand forecasts for large industrial customers and existing and potential wholesale water customers. Applied statistical and numeric forecasting techniques to assess trends in unit water use for each customer class. The forecast projects total annual demand, average day, maximum month, and maximum day demands and forms the basis for other ongoing facility and operations planning efforts.
- Developed a Water Allocation Permit renewal and extension application for the Passaic Valley Water Commission. Secured a new 25-year permit for the diversion of surface water from the Pompton and Passaic Rivers. The new water diversion permit for the Commission supports more flexible operations and more efficient source utilization. The Commission serves a retail service population of 325,000 and effectively serves an additional 260,000 people through sale-for-resale connections.
- Prepared a cost of service allocation study for Passaic Valley Water Commission, a regional water system that serves a large urban retail service population and a significant outlying area through direct retail and wholesale water sales. Allocated costs based on standard methodologies to Owner Cities, External Cities Retail, and Wholesale classes of service. The Commission has annual revenues in excess of \$71 million.
- Prepared a cost of service allocation study for three Pennsylvania Municipal Utilities Authorities considering a joint water supply expansion project. Evaluated and allocated anticipated construction and operating costs for the plant expansion and assigned costs of existing facilities using a commodity-demand allocation method. Developed a recommended tariff design to allow for the fair recovery of prospective costs associated with the expanded facilities.
- Prepared a cost allocation study and tariff design study for Bedminster Municipal Utilities Authority. The study developed an integrated five-year financial plan for the Authority and allocated the revenue requirement among water and sewer services. Rates were developed to allow the Authority to properly recover costs from its various water and sewer customer classes.

ACCOMPLISHMENTS (CONTINUED)

- Developed a commercial rates study for Whitemarsh Township Authority that resulted in the modernization of the Authority's commercial rate structure. A system comprised of 33 different rate costs was replaced with a uniform rate structure, including a fixed service charge based on water meter capacity ratios and volumetric changes for the quantity of water actually used.
- Developed a residential rates study for Whitemarsh Township Authority that evaluated the cost/benefits of converting a fixed-rate EDU tariff to a volumetric tariff. Developed recommendations for new rates for the ensuing five-years.
- Developed an initial tariff study for Branchville Borough. The Borough had constructed a new community sanitary sewer system to replace hundreds of on-lot disposal systems and small, individual wastewater treatment systems located throughout the Borough. Using engineer's estimates of operating costs, developed a total revenue requirement, and allocated that revenue requirement to three classes of customer service. Developed an initial rate structure designed to recover the projected full revenue requirement.
- Prepared a cost of service allocation study for Southeast Morris County Municipal Utilities Authority, a regional water system that serves a suburban retail service population and several wholesale water customers. Allocated costs based on standard methodologies to various classes of residential, commercial industrial, and wholesale service. Developed a plan to move each service class to full-cost pricing over time.
- Developed a five-year comprehensive business plan for Passaic Valley Water Commission. This plan moved the Commission from an annual operating budget to a five-year budget that links operating costs, capital construction and debt service requirements to customer growth and revenue requirements and rates. The plan was instrumental in obtaining an improved bond rating and positioning the Commission to undertake a major capital improvement program.
- Developed a five-year comprehensive business plan for the North Wales Water Authority. This plan established a rolling five-year operating and capital budget that links operating costs, capital construction, and debt service requirements to customer growth and revenue requirements and rates. The plan was instrumental in maintaining current rates while also maintaining the Authority's AA bond rating.
- Served as an expert witness in an arbitration involving a dispute between a New Jersey municipal water department and A.C. Schultes, Inc., a well contractor. Assisted A.C. Schultes in supporting its claim for a contract modification and the recovery of unanticipated expenses. The arbitrator awarded the contractor 100% of its cost claim.
- Served as an expert witness in a matter involving the alleged contamination of a New Jersey municipal water system with heavy metals and organic chemicals. Reviewed over 38,000 discrete water quality sample results, analyzed the operational records of the system, and developed a computer model (EPANET2) depicting water flow and

ACCOMPLISHMENTS (CONTINUED)

water quality changes over a period spanning two decades. Assisted the client in successfully defeating a threatened class action lawsuit at the certification level.

- Served as an expert witness in a matter involving the alleged contamination of nearly 600 private wells in an area near Fairbanks, Alaska. Evaluated alternatives for the provision of alternate water supplies including the extension of an investor-owned water system, a publicly-owned water system, and a variety of on-site treatment and supply options. Assisted in the defense of the former owner of the site where the contamination was later alleged to have originated.
- Served as a mediator involving a dispute between the Long Beach Township Water Department and Don Siegel Construction Co., Inc., a pipeline installation contractor. Assisted the parties in resolving various construction cost claims and in interpreting the contract construction documents. Litigation over the disputes was avoided.
- Assisted a regional developer in obtaining wastewater planning approval for a project in an area determined to be in an "overload" condition by Pennsylvania DEP. This effort required the facilitation of negotiations between regional wastewater entities for wastewater conveyance and treatment services, expert consulting with a municipality and PA DEP concerning the municipality's update to its Act 537 facilities plan, and coordination with other engineering consultants to secure final permit approvals.
- Developed a review of alternatives for the renovation or replacement of the Ridge Road Reservoir for Perkasio Regional Authority. Analyzed alternatives for reconstructing or replacing an in-ground water distribution reservoir. Developed a scope of services for a site geotechnical evaluation and assessed the potential cost of various renewal strategies.
- Reviewed engineering plans and operational practices in numerous water and wastewater rate adjustment proceedings and quality of service proceedings for the New Jersey Division of Rate Counsel. Assessed utility engineering design and construction plans, developed alternatives to utility proposed projects, and evaluated the utility companies' ability to render safe, adequate, and proper water or wastewater service. Provides expert testimony in the following utility rate, franchise expansion and service quality proceedings:
 - Acacia Lumberton Manor Fire Service Complaint BPU
Docket No. WC01080495
 - Andover Utility Company
BPU Docket WR17070726
 - Applied Waste Water Management Rates
BPU Docket No. WR03030222
 - Applied Waste Water Management Base Rates
BPU Docket No. WR08080550
 - Applied Waste Water Management Franchise

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WE03070530
- Applied Waste Water Management Andover Franchise
BPU Docket No. WE04111466
- Applied Waste Water Management Hillsborough Franchise
BPU Docket No. WE04101349
- Applied Waste Water Management Oakland Franchise
BPU Docket No. WE04111467
- Applied Waste Water Management Union Twp Franchise
BPU Docket No. WE050414
- Applied Waste Water Management Tewksbury Franchise
BPU Docket No. WR08100908
- Aqua NJ Freehold Franchise Extension Review
BPU Docket WE09120965
- Aqua NJ Pine Hill Franchise
BPU Docket No. WE05070581
- Aqua NJ Upper Freehold Franchise
BPU Docket No. WE05100822
- Aqua NJ Readington Wastewater Franchise
BPU Docket No. WE07030224
- Aqua New Jersey Base Rate Case
BPU Docket No. WR07120955
- Aqua New Jersey Acquisition of Bloomsbury Water
BPU Docket WE09050360
- Aqua New Jersey Acquisition of Harkers Hollow Water
BPU Docket WM09020119
- Aqua New Jersey Base Rate Adjustment
BPU Docket No. WR09121005
- Aqua New Jersey Base Rate Adjustment
BPU Docket No. WR11120859
- Aqua New Jersey Base Rate Adjustment
BPU Docket WR14010019
- Aqua New Jersey Base Rate Adjustment
BPU Docket WR18121351
- Aqua New Jersey DSIC Foundational Filing
BPU Docket No. WR12070685
- Aqua New Jersey Byram Franchise & Acquisition
BPU Docket No. WE15080957
- Aqua New Jersey Cliffside Park Acquisition
BPU Docket No. WE16040307
- Aqua New Jersey Acquisition of Oakwood Village
BPU Docket WM16080739
- Aqua New Jersey Base Rate Adjustments

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WR16010089
- Aqua NJ Distribution System Improvement Charge
Foundational Filing
BPU Docket No. WR16010090
- Atlantic City Sewerage Company Base Rate Adjustment
BPU Docket No. WR09110940
- Atlantic City Sewerage Company Base Rate Adjustment
BPU Docket WR11040247
- Atlantic City Sewerage Company Base Rate Adjustment
BPU Docket WR14101263
- Bayonne MUA – United Water NJ/ Kohlberg, Kravis, Roberts Joint
Venture Operations & Financing Agreement
BPU Docket No. WM12080777
- Bayview Water Company Rates
BPU Docket No. WR01120818
- Camden and United Water Environmental Services, Inc.
Management Services Agreement Modifications
BPU Docket No. WM12050457
- Borough of Haledon Rates
BPU Docket No. WR01080532
- City of Orange Privatization Review
BPU Docket No. WO03080614
- Crestwood Village Loan Approval
BPU Docket No. WF04091042
- Crestwood Village Water Co Base Rates
BPU Docket No. WR07090706
- Elizabethtown Water Co. v. Clinton Board of Adjustment BPU
Docket No. WE02050289
- Elizabethtown Water Company Rates
BPU Docket No. WR03070510
- Elizabethtown Water Company Franklin Franchise
BPU Docket No. WE05020125
- Elizabethtown Water Company Purchased Water Adjustment Clause
BPU Docket No. WR04070683
- Environmental Disposal Corporation Main Extension Agreement
BPU Docket No. WO04091030
- Environmental Disposal Corporation Rates
BPU Docket No. WR04080760
- Environmental Disposal Corporation Rates
BPU Docket No. WR07090715
- Environmental Disposal Corporation Change in Control
BPU Docket No. WM15040492

ACCOMPLISHMENTS (CONTINUED)

- Fayson Lake Water Company Rates
BPU Docket No. WR03040278
- Fayson Lake Water Company Base Rates
BPU Docket No. WR07010027
- Fayson Lake Water Company Base Rates
BPU Docket WR14050405
- Fayson Lake Water Company Base Rates
BPU Docket WR17101041
- Gordon's Corner Water Company Rates
BPU Docket No. WR03090714
- Gordons Corner Water Co Base Rate Adjustment
BPU Docket No. WR10060430
- Gordons Corner Water Co Base Rate Adjustment
BPU Docket No. WR12090807
- Gordons Corner Water Co Base Rate Adjustment
BPU Docket WR14040325
- Gordons Corner Water Co Base Rate Adjustment
BPU Docket WR18030268
- Jensens Deep Run Franchise Transfer
BPU Docket No. WE10070453
- Lake Valley Water Company Rates
BPU Docket No. WR04070722
- Mahwah Tank Maintenance Privatization
BPU Docket No. WO15050548
- Middlesex Water Company Rates
BPU Docket No. WR03110900
- Middlesex Water Company Rates
BPU Docket No. WR05050451
- Middlesex Water Company Base Rates
BPU Docket No. WR07040275
- Middlesex Water Co Transmission Main Prudency Review
BPU Docket No. WO08020098
- Middlesex Water Company Base Rates
BPU Docket No. WR09080666
- Middlesex Water Company DSIC Foundational Filing
BPU Docket No. WR12111021
- Middlesex Water Company Base Rates
BPU Docket No. WR12010027
- Middlesex Water Co DSIC Foundational Filing
BPU Docket No. WR14050508
- Middlesex Water Company Base Rate Adjustment
BPU Docket No. WR15030391

ACCOMPLISHMENTS (CONTINUED)

- Middlesex Water Company Base Rate Adjustment
BPU Docket No. WR17101049
- Montague Water Company Rates
BPU Docket No. WR03121034
- Montague Sewer Company Rates
BPU Docket No. WR03121035
- Montague Sewer Company Rates
BPU Docket No. WR05121056
- Montague Water Company Acquisition
BPU Docket No. WM10060432
- Montague Water & Sewer Company Rates
BPU Docket No. WR12110983
- Mount Holly Water Company Rates
BPU Docket No. WR03070509
- Mount Olive Villages Water & Sewer Franchise
BPU Docket No. WE03120970
- Mount Olive Villages Sewer Base Rate Adjustment
BPU Docket No. WR16050391
- Mount Olive Villages Water Base Rate Adjustment
BPU Docket No. WR16050390
- New Jersey American Water Company Rates
BPU Docket No. WR03070511
- New Jersey American Water Company Rates
BPU Docket No. WR06030257
- New Jersey American Water Acquisition of Mt. Ephraim
and Approval of Municipal Consent
BPU Docket No. WE06060431
- New Jersey American Water Purchased Water Adjustment Clause
BPU Docket No. WR05110976
- New Jersey American Water Company – Mantua Franchise
BPU Docket No. WE07060372
- New Jersey American Water Co – Rocky Hill Franchise
BPU Docket No. WE07020103
- New Jersey American Water Company Rates
BPU Docket No. WR08010020
- New Jersey American Hopewell Township Franchise
BPU Docket No. WE07120981
- New Jersey American Water Co/City of Trenton
Joint Petition for Approval of the Sale of Water System
BPU Docket No. WE08010063
- New Jersey American Water Company Petition for Approval of a
Distribution System Improvement Charge (DSIC)

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WO08050358
- New Jersey American Water Co Management Audit
BPU Docket No. WA09070510
- New Jersey American Water Base Rate Adjustment
BPU Docket No. WR10040260
- New Jersey American Water Company Franklin Franchise Review
BPU Docket No. WE11070403
- New Jersey American Water Company Base Rate Adjustment
BPU Docket No. WR11070460
- New Jersey American Water Company Base Rate Adjustment
BPU Docket No. WR15010035
- New Jersey American Water Company DSIC Foundational Filing
BPU Docket No. WR15060724
- New Jersey American Water – Eastampton Franchise Review
BPU Docket No. WE17020139
- New Jersey American Water – Shorelands Water Co. Acquisition
BPU Docket No. WM16101036
- New Jersey American Water Co Howell Franchise Review
BPU Docket No. WE17111148
- New Jersey American Water Base Rate Adjustment
BPU Docket No. WR17090985
- New Jersey American Water Acquisition of Mt. Ephraim Sewer
BPU Docket WM19010117
- New Jersey Natural Gas Rates
BPU Docket No. GR07110889
- Oakwood Village Sewer Change in Control
BPU Docket No. WM07070535
- Oakwood Village Sewer System Change in Control
BPU Docket No. WM15091006
- Parkway Water Company Rates
BPU Docket No. WR05070634
- Pinelands Water Company Rates
BPU Docket No. WR03121016
- Pinelands Wastewater Company Rates
BPU Docket No. WR03121017
- Pinelands Water Company Rates
BPU Docket No. WR08040282
- Pinelands Wastewater Company Rates
BPU Docket No. WR08040283
- Pinelands Water Company Rates
BPU Docket No. WR120807342
- Pinelands Wastewater Company Rates

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WR12080735
- Pinelands Water Company Rates
BPU Docket No. WR15101200
- Pinelands Wastewater Company Rates
BPU Docket No. WR15101202
- Pinelands Water Company Rates
BPU Docket No. WR19030417
- Pinelands Wastewater Company Rates
BPU Docket No. WR19030418
- Rahway Operational Services Agreement Review
BPU Docket No. WO16070678
- Rock GW, LLC Determination of Applicability of Board Regulation
BPU Docket No. WO08030188
- Rock GW, LLC Determination of Applicability of Board Regulation
BPU Docket No. WO10100739
- Roxbury Water Company Rates
BPU Docket No. WR09010090
- Roxciticus Water Company Change in Control
BPU Docket No. WM15080982
- SB Water & Sewer Company Acquisition
BPU Docket No. WM16030197
- Seabrook Water Company Franchise
BPU Docket No. WC02060340
- Seaview Harbor Water Company Change in Control
BPU Docket No. WM13100957
- Shorelands Water Company Rates
BPU Docket No. WR04040295
- Shorelands Water Company Base Rates
BPU Docket No. WR10060394
- Shore Water Company Rates
BPU Docket No. WR09070575
- South Jersey Water Supply Change in Control
BPU Docket No. WM07020076
- Suez Arlington Hills Wastewater Rates
BPU Docket No. WR16060510
- Suez Water NJ DSIC Foundational Filing
BPU Docket No. WR13030210
- Suez Water NJ Borstad Water Company Acquisition
BPU Docket No. WE15111247
- Suez Water New Jersey Base Rate Adjustment
BPU Docket No. WR15101177
- Suez Water Toms River Base Rate Adjustments

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WR15020269
- Suez Water Toms River DSIC Foundational Filing
BPU Docket WR13111128
- Suez Water NJ – USG Cottonwood Agreement
BPU Docket No. WR15070856
- Suez Water NJ Electrical Efficiency Contract Eval.
BPU Docket No. WO17050494
- Suez Water Princeton Meadows Deferred Accounting
BPU Docket WF17030186
- SUEZ Water NJ Acquisition of West Milford MUA
BPU Docket WM17111189
- SUEZ Water NJ Base Rate Adjustment
BPU Docket WR18050593
- SUEZ Water NJ Acquisition of Independence MUA
BPU Docket WM18010008
- SUEZ Water NJ Acquisition of West Milford MUA
BPU Docket WM17111189
- SUEZ Water NJ Acquisition of East Brookwood
BPU Docket WM18040449
- United Water Acquisitions Evaluation
BPU Docket No. WM02060354
- United Water Arlington Hills Franchise
BPU Docket No. WE07020084
- United Water Arlington Hills Sewerage Base Rates
BPU Docket No. WR08100929
- United Water New Jersey Base Rates
BPU Docket No. WR07020135
- United Water New Jersey Base Rates
BPU Docket No. WR08090710
- United Water New Jersey Base Rates
BPU Docket No. WR11070428
- United Water New Jersey DSIC Foundational Filing
BPU Docket No. WR12080724
- United Water New Jersey Management Audit
BPU Docket: WA05060550
- United Water New Jersey Affiliate Transaction Review – JPI Painting
BPU Docket No. WO10060410
- United Water New Jersey Affiliate Transaction
Review – Utility Service Contract
BPU Docket No. WO10060409
- United Water New Jersey Mt Arlington Franchise Extension Review
BPU Docket No. WE09121006

ACCOMPLISHMENTS (CONTINUED)

- United Water New Jersey Vernon Township Franchise Extension Review
BPU Docket WE10110870
 - United Water New Jersey Vernon Township Franchise Extension Review
BPU Docket WE11030155
 - United Water Great Gorge/Vernon Sewer Base Rates
BPU Docket No. WR10100785
 - United Water Toms River Base Rates
BPU Docket No. WR080830139
 - United Water Toms River Base Rates
BPU Docket No. WR12090830
 - United Water West Milford Sewerage Base Rates
BPU Docket No. WR08100928
 - Village Utility Inc Franchise and Initial Tariff
BPU Docket 180808926
- Assisted the New Jersey Division of Rate Counsel in assessing drought conditions effecting water utilities in New Jersey during the 2002 drought. Analyzed proposals for water supply interconnections to mitigate drought impacts, developed position statements regarding pricing alternatives, and provided a critique of State water supply management initiatives prior to and during drought conditions.
 - Assisted the New Jersey Division of Rate Counsel in assessing the need for a Distribution System Improvement Charge (DSIC) to allow regulated water utilities to accelerate the recovery of capital investments in water distribution assets (BPU Docket WO10090655). Provided financial analyses of current and prospective distribution renovation programs. Reviewed and commented on draft language for a generic rule making.
 - Assisted the Delaware Public Advocate in assessing drought conditions effecting water utilities in northern New Castle County during the 2002 drought (PSC Docket No. 323-02). Reviewed water utility operations prior to and during the drought emergency, assessed the effectiveness of use curtailments, and developed recommendations to assure proper, cost-effective resource management for future drought conditions.
 - Assisted the Delaware Public Service Commission in a determination of rate base for Artesian Water Company in PSC Docket 08-96. Evaluated selected plant facilities and proposed projects to determine the need to impute revenues for under-utilized facilities in establishing new base rates.
 - Assisted the Delaware Public Service Commission in an evaluation of the Initial Tariff filing submitted by Tidewater Environmental Services, Inc. (PSC Docket No. 11-274WW) for wastewater service in a development known as "The Ridings." Evaluated projected operating expenses and rate base claims and developed recommendations that avoided a potential 17.5% rate increase.

ACCOMPLISHMENTS (CONTINUED)

- Prepared an assessment of the water supply capacity certification and water conservation plan submitted by United Water Delaware in PSC Docket 09-282 on behalf of the Delaware Public Service Commission. Evaluated the capacity of the sources of supply available to the Company with respect to projected demands and the requirements of the Delaware Water Supply Self-Sufficiency Act of 2003. Assessed the effectiveness of water conservation activities and developed recommendations to improve the efficiency and effectiveness of Company conservation programs.
- Provided expert testimony on behalf of the Delaware Public Advocate in the matter of Inland Bays Preservation Company's request for an increase in wastewater rates before the Delaware Public Service Commission (PSC Docket No. 09-327-WW). Evaluated plant facilities, proposed projects, and the allocation of developer contributions in aid of construction to determine rate base. Assessed the level of operating expenses claimed in the filing and recommended adjustments to substantially lower the requested rate increase.
- Provided expert testimony on behalf of the Delaware Public Advocate in the matter of Tidewater Environmental Services, Inc.'s request for a base rate adjustment for seven of its regulated wastewater utility systems (PSC Docket No. 11-329WW). Established independent revenue requirements for each system to assure that costs and rates were properly matched for each independent group of customers served by the Company. Recommended an overall rate adjustment that was equivalent to 60% of the initial rate request and was within 12% of the final Ordered rates.
- Provided expert testimony on behalf of the Delaware Public Advocate in the matter of Tidewater Utilities, Inc.'s request for a base rate adjustment for its regulated water systems throughout Delaware (PSC Docket 13-466). Provided testimony on engineering and accounting issues related to the determination of the Company's revenue requirement that resulted in a rate settlement equivalent to twenty percent of the Company's filed rate request.
- Prepared a tariff design evaluation for the Pequannock River Basin Regional Sewer Authority to assess alternative rate structures for service to regional participating municipalities. Evaluated current budgeting and billing systems and alternatives to equitably allocate regional system costs to the participating municipalities.
- Provided expert testimony on behalf of the Village of Ridgewood Water Utility in a dispute regarding the regional allocation of costs to retail customers serviced beyond the corporate boundaries of the Village. Reviewed historical budgets and actual financial results, developed revised and updated cost allocations for shared services, and provided recommendations on retail rates charged within and outside of the Village.
- Provided expert advice to the Borough of Ridgely regarding the failure of a 36-inch diameter PCCP water main owned by an investor-owned utility. Assisted the Borough in negotiating a suitable restoration and replacement plan and in negotiations for the recovery of damages resulting from the break.

ACCOMPLISHMENTS (CONTINUED)

- Provided expert testimony on behalf of the Township of Newtown before the Pennsylvania Public Utility Commission (PUC Docket No. P-2012-2327738) in regard to a dispute between the Township and Newtown Artesian Water Company regarding the siting of a proposed new well. Evaluated current and future water supply needs, water quality and treatment needs, and the revenue requirement of the proposed project relative to other alternatives.
- Managed 175 municipal and commercial water and wastewater contracts located in seven states for American Water Services/AmericanAnglian Environmental Technologies. Through these contracts, cost effective water and wastewater service was provided to over one million people. Contracts included the 160 MGD City of Buffalo, NY water system and the 30 MGD Scranton Sewer Authority wastewater operations. Directed an operations staff of 700 employees. Eliminated financial losses while improving safety and quality.
- Directed a marketing and business development staff for AmericanAnglian Environmental Technologies that secured the largest operations and maintenance contract awarded in the US in 1999 and the second-best overall performance in the US market. Increased revenues by 28%. Evaluated potential contract operations and design/build projects to identify operating and capital savings on hundreds of potential contracts throughout the United States. Evaluations included Atlanta, Georgia; Scranton, Pennsylvania; and Springfield, Massachusetts.
- Managed the operations of 16 water systems for New Jersey-American Water Company, a regulated investor-owned utility serving one million people throughout NJ. Coordinated the activities of a decentralized operations staff of 440 to provide reliable water service, ensure environmental compliance, control costs, manage and maintain system assets, reduce liability, provide site security and maintain a safe work place, and meet financial objectives. Responsible for the maintenance and operation of all source of supply, treatment, filtration, and storage facilities, producing and distributing between 100 MGD and 220 MGD, as well as over 4,000 miles of water transmission and distribution facilities.
- Directed a team of engineering, legal, public relations and financial professionals that planned, designed, permitted, and constructed a \$192,000,000 water treatment plant and pipeline system for New Jersey-American Water Company. The intake, constructed in environmentally sensitive areas, and the state-of-the-art water filtration plant can be expanded to produce 100 MGD. The project is the principal source of surface water for nearly one million people in southern New Jersey and it was built to allow new regulatory controls on ground water use to go into effect. The project was completed within budget and on schedule.
- Developed the financial model and contract language that allowed water lines to be extended to over 3,000 homes with contaminated private wells in Atlantic County, New Jersey. This program provided the financial assurances needed to construct several miles of water mains, eliminate federal tax liability, and reduce costs by 34%.

ACCOMPLISHMENTS (CONTINUED)

- Initiated and directed the first study of desalination for public water supply purposes in NJ for the City of Cape May. This project evaluated two desalination technologies and demonstrated that reverse osmosis could be used effectively to treat brackish water at a competitive cost. A full-scale plant has since been placed in service.
- Developed long-range regional water supply plan for Monmouth County, New Jersey, a county that was adding as many as 1,000 water utility customers per year and seriously stressing the water supply. The plan evaluated alternative sources of water, conservation, and regional reservoir development. The recommendations avoided \$30,000,000 in capital construction while ensuring a safe supply of water for a 15-year planning period. Negotiated supply sharing operating agreements with the New Jersey Water Supply Authority to implement the plan.
- Directed a staff of engineers and consultants in preparing comprehensive plans for 60 water systems located throughout the United States. Communities served by these systems include Pittsburgh, Pennsylvania and its surrounding suburbs; Charleston, West Virginia; Richmond, Indiana; E. Saint Louis, Illinois; and Monterey, California. Evaluated alternatives and identified the least costly means of providing safe water service for each system. Assessed operations strategies to identify external threats to the reliability and efficiency of these systems. Identified specific capital facility needs and operations strategies for five, ten and fifteen-year planning horizons, defined the long-term role of each system in prompting regional water supply development, and assessed the impact of future State and Federal water quality regulations on system operations and needs.
- Developed a formula for allocating ground water to 30 water suppliers in southern New Jersey for the New Jersey Department of Environmental Protection and negotiated an implementation agreement with effected suppliers. The New Jersey Legislature adopted the formula in the Water Supply Management Act Amendments of 1992. The allocation formula protects a regional aquifer from over-pumping.
- Developed a plan to convey storm water through a sixty-foot high railroad embankment in Prince Georges County, Maryland. Evaluated alternative methods and selected one that allowed an existing culvert to be modified to carry higher flow rates. Saved over \$500,000 in construction costs. The Washington Suburban Sanitary Commission and Prince Georges County adopted the design as a standard in their storm water design manual.
- Negotiated Lakewood, New Jersey's first three-year water and wastewater labor agreement in the face of an impending strike, departing from prior history of year-to-year contract agreements.
- Provided expert testimony in judicial proceedings involving utility rate adjustments before the New Jersey Board of Public Utilities, the Connecticut Department of Public Utility Control and the New York Public Service Commission. Testified on environmental and operations topics including rate setting strategies, source of supply improvements, water resources management, treatment to mitigate contamination,

ACCOMPLISHMENTS (CONTINUED)

staffing levels and operating practices. Testified as to the least costly means of operating and maintaining water and wastewater facilities.

- Served as a gubernatorial appointee to the New Jersey Water Supply Advisory Council under Governors Florio and Whitman. Advised the NJ Department of Environmental Protection on a variety of water resources management issues.
- Coordinated the response to an outbreak of giardiasis for the US Environmental Protection Agency. The outbreak affected 20% of the people served by a municipal water system in north-central Pennsylvania. Specified immediate control measures, short-term treatment techniques, and long-term treatment improvements to resolve the immediate problem and prevent a recurrence.

AWARDS

John J. Gallen Memorial Award presented by the Villanova University College of Engineering (1988) in recognition of many significant achievements in the field of water supply and distribution, effective leadership in developing regional water supply systems and contributions in the development of comprehensive plans for water supply systems.

George Warren Fuller Award presented by the American Water Works Association (2013) for distinguished service to the water supply field in commemoration of the sound engineering skill, brilliant diplomatic talent and constructive leadership which characterized the life of George Warren Fuller.

REPRESENTATIVE CLIENTS

- A.C. Schultes, Inc.
- Aquarion Water Company of Connecticut
- Aquarion Water Company of Massachusetts
- Atlantic City Municipal Utilities Authority
- Bethlehem Water Authority
- BOC Gases
- Bucks County Water & Sewer Authority
- Camco Management
- Cedar Grove Township
- Consumers New Jersey Water Company
- Delaware Public Advocate
- Delaware Public Service Commission
- D. R. Horton – New Jersey
- Elmira Water Board
- Erie City Water Authority
- Greater Ouachita Water Company

ACCOMPLISHMENTS (CONTINUED)

- Harris Defense Group
- Jersey City Municipal Utilities Authority
- Lower Makefield Township
- New Jersey-American Water Company
- New Jersey Division of Rate Counsel
- New Jersey Water Supply Authority
- New York City Department of Environmental Protection
- North Penn Water Authority
- North Wales Water Authority
- Passaic Valley Water Commission
- Pequannock River Basin Regional Sewerage Authority
- Perkasio Borough
- Perkasio Borough Authority
- Pricewaterhouse Coopers, LLP
- Southeast Morris County Municipal Utilities Authority
- Sussex Shores Water Company
- Township of Sparta (NJ)
- U.S. Water, LLC
- Upper Dublin Township
- Village of Ridgewood (NJ)
- Williams Alaska Resource

PROFESSIONAL QUALIFICATIONS

Registered Professional Engineer in Delaware (2004), Maryland (1982), New Jersey (1984), New Mexico (1987), New York (1984) and Pennsylvania (1983).

Licensed to complete RAM-WSM vulnerability assessments (2002).

PROFESSIONAL ASSOCIATIONS

American Society of Civil Engineers, American Water Works Association (Trustee of New Jersey Section), American Water Resource Management Association, International Water Association, National Ground Water Association, National Fire Protection Association, Water Environment Federation, Tau Beta Pi.

PROFESSIONAL HISTORY

HOWARD J. WOODS, JR. & ASSOCIATES, LLC	2000 - Present
General Manager	
AMERICAN WATER WORKS COMPANY	1983 - 2000
American Water Services, Inc.	
Senior Vice President - Operations	1999 - 2000
American Anglian Environmental Tech., L.P.	
Senior Vice President - Business Development	1998 - 1999

ACCOMPLISHMENTS (CONTINUED)

American Water Works Service Co. Vice President - Special Projects	1997 - 1998
New Jersey-American Water Co., Inc. Vice President - Operations	1989 - 1997
American Water Works Service Co. Engineering Manager	1988 - 1989
System Director of Planning	1986 - 1988
Division Manager of Operations	1984 - 1986
Division Director of Engineering	1983 - 1984
JOHNSON, MIRMIRAN & THOMPSON Project Engineer	1981 - 1983
U.S. ENVIRONMENTAL PROTECTION AGENCY Environmental Engineer	1977 - 1981

CONTACT INFORMATION

Howard J. Woods, Jr., P.E.
Howard J. Woods, Jr. & Associates, L.L.C.
49 Overhill Road, East Brunswick, NJ 08816-4211
Phone: 267-254-5667
E-mail: howard@howardwoods.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017951 (water)
	:		C-2020-3019348
v.	:		C-2020-3019305
	:		
Pittsburgh Water and Sewer Authority - Water	:		
	:		
Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017970 (wastewater)
	:		C-2020-3019349
v.	:		C-2020-3019302
	:		
Pittsburgh Water and Sewer Authority - Wastewater	:		
	:		
Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to Authorize the Pay-As-You-Go Method of Financing	:	Docket Nos.	P-2020-3019019
	:		
	:		
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	:		

**TESTIMONY AND EXHIBITS OF THE
CITY OF PITTSBURGH**

City of Pittsburgh Statement No. 1	Direct Testimony, Daniel Gilman Ex. DG-1 1995 Cooperation Agreement Ex. DG-2 1995 Capital Lease Agreement
City of Pittsburgh Statement No. 2	Direct Testimony, Howard Woods, Jr., PE

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

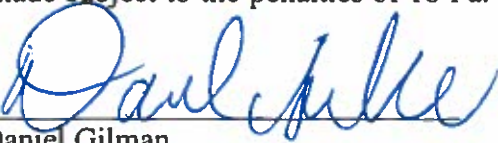
Pennsylvania Public Utility Commission : Docket Nos. R-2020-3017951 (water)
: C-2020-3019348
v. : C-2020-3019305
:
Pittsburgh Water and Sewer Authority - :
Water :

Pennsylvania Public Utility Commission : Docket Nos. R-2020-3017970 (wastewater)
: C-2020-3019349
v. : C-2020-3019302
:
Pittsburgh Water and Sewer Authority - :
Wastewater :

Petition of The Pittsburgh Water and : Docket Nos. P-2020-3019019
Sewer Authority for Waiver of Provisions :
of Act 11 to Increase the DSIC CAP, to :
Permit Levelization of DSIC Charges, and :
to Authorize the Pay-As-You-Go Method :
of Financing :

**VERIFICATION STATEMENT OF DANIEL GILMAN,
CHIEF OF STAFF TO MAYOR WILLIAM PEDUTO
ON BEHALF OF THE CITY OF PITTSBURGH**

I, Daniel Gilman, on behalf of the City of Pittsburgh, hereby verify that the documents preliminarily identified as The City of Pittsburgh's Statement No. 1, The City of Pittsburgh Exhibit DG-1 and The City of Pittsburgh Exhibit DG-2 were prepared by me or under my direct supervision and control. Furthermore, the facts contained therein are true and correct to the best of my knowledge, information and belief and I expect to be able to prove the same at an Evidentiary Hearing in this matter. This Verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Daniel Gilman
Chief of Staff to the Honorable Bill Peduto
Mayor of the City of Pittsburgh

DATED: September 21, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

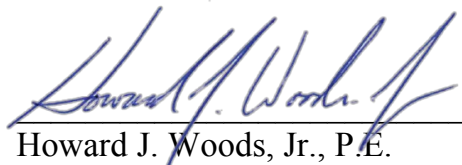
Pennsylvania Public Utility Commission, <i>et al.</i>	:	R-2020-3017951
	:	C-2020-3019348
v.	:	C-2020-3019305
	:	
Pittsburgh Water and Sewer Authority - Water	:	

Pennsylvania Public Utility Commission, <i>et al.</i>	:	R-2020-3017970
	:	C-2020-3019349
	:	C-2020-3019302
v.	:	
	:	
Pittsburgh Water and Sewer Authority - Wastewater:	:	

Petition of Pittsburgh Water and Sewer Authority	:	P-2020-3019019
For Waiver of Provisions of Act 11 to Increase	:	
The DSIC CAP, to Permit Levelization of DSIC	:	
Charges, and to Authorize the Pay-As-You-Go	:	
Method of Financing	:	

**VERIFICATION OF
HOWARD J. WOODS, JR., P.E. FOR THE
CITY OF PITTSBURGH**

I, Howard J. Woods, Jr., P.E., on behalf of the City of Pittsburgh, hereby verify that the documents preliminarily identified as City of Pittsburgh Statement No. 2 was prepared by me or under my direct supervision and control. Furthermore, the facts contained therein are true and correct to the best of my knowledge, information and belief and I expect to be able to prove the same at an Evidentiary Hearing in this matter. This Verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Howard J. Woods, Jr., P.E.
Consultant for the
City of Pittsburgh

Dated: September 21, 2020



Thomas J. Sniscak
(717) 703-0800
tjsniscak@hmslegal.com

Kevin J. McKeon
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Whitney E. Snyder
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August 27, 2020

VIA ELECTRONIC FILING

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

Re: Pennsylvania Public Utility Commission v. Pittsburgh Water and Sewer Authority
– Water; Docket Nos. R-2020-3017951, et al.

Pennsylvania Public Utility Commission v. Pittsburgh Water and Sewer Authority
– Wastewater; Docket Nos. R-2020-3017970, et al.

Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of
Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to
Authorize the Pay-As-You-Go Method of Financing; Docket No. P-2020-3019019

**STIPULATION RECOGNIZING IMPACT OF ACT 70 UPON PWSA'S
MUNICIPAL RATE PROPOSAL**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Stipulation Recognizing Impact of Act 70 Upon PWSA's Municipal Rate Proposal in the above-referenced matter. In addition to the parties who signed the Stipulation, both the Office of Small Business Advocate and Pittsburgh United have indicated their non-opposition to the Stipulation. Copies have been served in accordance with the attached Certificate of Service.

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
August 27, 2020
Page 2

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

/s/ Thomas J. Sniscak

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for The City of Pittsburgh

TJS/das
Enclosures

cc: Honorable Mary D. Long (malong@pa.gov)
Honorable Emily I. DeVoe (edevoe@pa.gov)
Yvonne S. Hilton, City Solicitor (yvonne.hilton@pittsburghpa.gov)
John F. Doherty, Associate City Solicitor (john.doherty@pittsburghpa.gov)
Lawrence H. Baumiller, Assistant City Solicitor (lawrence.baumiller@pittsburghpa.gov)
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the persons listed below in accordance with the requirements of § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL ONLY

Sharon Webb, Esq.
Erin K. Fure, Esq.
Office of Small Business Advocate
Forum Place Building
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
swebb@pa.gov
efure@pa.gov
dasmus@pa.gov

Christine Maloni Hoover, Esq.
Erin L. Gannon, Esq.
Lauren E. Guerra, Esq.
Santo G. Spataro, Esq.
Office of Consumer Advocate
555 Walnut St., 5th Fl.,
Forum Place
Harrisburg, PA 17101-1923
choover@paoca.org
egannon@paoca.org
lguerra@paoca.org
sspataro@paoca.org

Gina L. Miller, Esq.
John M. Coogan, Esq.
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
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ginmiller@pa.gov
jcoogan@pa.gov

Ria Pereira, Esq.
Elizabeth R. Marx, Esq.
John W. Sweet, Esq.
The Pennsylvania Utility Law Project
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Harrisburg, PA 17101
pulp@palegalaid.net

Deanne M. O'Dell, Esq.
Daniel Clearfield, Esq.
Karen O. Moury, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street 8th Floor
Harrisburg, PA 17101
dodell@eckertseamans.com
dclearfield@eckertseamans.com

/s/ Thomas J. Sniscak

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder

DATED: August 27, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017951 (water)
	:		C-2020-3019348
v.	:		C-2020-3019305
	:		
Pittsburgh Water and Sewer Authority - Water	:		
	:		
Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017970 (wastewater)
	:		C-2020-3019349
v.	:		C-2020-3019302
	:		
Pittsburgh Water and Sewer Authority - Wastewater	:		
	:		
Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to Authorize the Pay-As-You-Go Method of Financing	:	Docket Nos.	P-2020-3019019
	:		
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Stipulation Recognizing Impact of Act 70 Upon PWSA’s Municipal Rate Proposal

NOW COME the Stipulating Parties (“Stipulating Parties”) to the above-captioned proceedings seeking to conserve the time and resources of all parties to the proceeding, the Presiding Administrative Law Judges, and the Commission, and hereby stipulate as follows and request that the following be made part of the record:

1. During the pendency of these rate proceedings legislation was passed that governs the rates to be charged by the Pittsburgh Water & Sewer Authority (PWSA) to the City of Pittsburgh (City).
2. Specifically, on July 23, 2020, Governor Wolf signed Act 70, which, among other things, provides that the 2019 Cooperation Agreement between PWSA and the City has “the force

and effect of law” until January 1, 2025, unless PWSA and the City mutually agree to an earlier termination date. Section 2802-G. Also, Act 70 provides that the 2019 Cooperation Agreement shall “supersede, during the term of the cooperation agreement, any provision of 66 Pa.C.S. Pt. I, a commission regulation, policy statement, order and regulatory proceeding as they pertain to issues covered by the cooperation agreement, including the authority's rates, terms and conditions of service rendered to the city and the respective rights and duties between the authority and the city.” Section 2803-G. Act 70 is attached as Appendix A.

3. During the pendency of this proceeding and due to Commission Orders in a different proceeding issued before Act 70 became law, PWSA submitted supplemental testimony that revised the original position contained in its direct testimony submitted on March 6, 2020 by proposing to establish a Municipal rate in these rate proceedings for the first time on May 15, 2020.
4. On July 21, 2020, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate submitted their direct testimony in response to PWSA’s direct and supplemental testimony, and proposed adjustments or a different Municipal rate. At the time that these parties submitted their direct testimony, PWSA’s Municipal rate proposal was operative and not contravened by Act 70.
5. Based on the foregoing legislative provision as cited in paragraph 2 above, an unopposed petition for leave to withdraw PWSA’s proceeding for approval of the Cooperation Agreement under 66 Pa. C.S. § 507 was filed by PWSA. That petition is pending decision before the Administrative Law Judges.

6. Due to Act 70, PWSA has withdrawn or will withdraw its Supplemental testimony and associated exhibits or schedules establishing a Municipal rate for the City.
7. Due to Act 70 the Stipulated Parties agree that each is withdrawing any proposed Municipal Rate and withdraws any such recommendation or evidence in support of any recommended Municipal Rate in the above-captioned rate dockets. Withdrawal of such recommendation or evidence may be performed by any one of the four methods described in paragraph 8.
8. The Stipulating Parties shall indicate and identify, before entering any pre-submitted testimony and exhibits into the record, which portions of their pre-submitted testimony and exhibits are withdrawn. The Stipulated Parties may do so through (i) strike-through; (ii) a separate sheet identifying what pages, lines or sections or portions of exhibits are withdrawn; (iii) by clean copy; (iv) or by surrebuttal testimony. The Stipulating Parties may adjust any schedule that would change solely due to the withdrawal of a Municipal rate proposed or adjustment thereto. The Parties also agree that they will withdraw any adjustments in the rate case that assumes payments or remittances that are inconsistent with the Cooperation Agreement.
9. Stipulating Parties agree if a party withdraws its Municipal rate recommendation through surrebuttal testimony, the withdrawing party need not specifically identify each and every page, line or sections or portions of exhibits of its prior testimony related to the Municipal rate recommendation that should be considered withdrawn. However, the withdrawing party agrees it will make best efforts to refer to its prior testimony with sufficient specificity to leave no uncertainty its Municipal rate recommendation has been withdrawn.

10. If a party withdraws its recommendation regarding a Municipal rate through surrebuttal testimony, the Stipulating Parties agree they will not seek to prevent entry into the record of any testimony that the withdrawing party submitted prior to surrebuttal testimony related to the Municipal rate to the extent the recommendation contained in such prior testimony related to the Municipal rate has been withdrawn through surrebuttal testimony.
11. This Stipulation is without admission or prejudice in any other part of these rate proceedings and in any future rate proceeding.
12. The Stipulating Parties request that this stipulation be approved and made part of the record.
13. This Stipulation may be executed in counterparts, which shall together constitute one and the same stipulation agreement.

Stipulating parties:

For the City of Pittsburgh:	<u>Thomas J. Sniacak</u>	Date: 8/21/20
For the Pittsburgh Water & Sewer Authority:	_____	Date:
For the Bureau of Investigation & Enforcement:	_____	Date:
For the Office of Consumer Advocate:	_____	Date:
For the Office of Small Business Advocate:	_____	Date:

10. If a party withdraws its recommendation regarding a Municipal rate through surrebuttal testimony, the Stipulating Parties agree they will not seek to prevent entry into the record of any testimony that the withdrawing party submitted prior to surrebuttal testimony related to the Municipal rate to the extent the recommendation contained in such prior testimony related to the Municipal rate has been withdrawn through surrebuttal testimony.
11. This Stipulation is without admission or prejudice in any other part of these rate proceedings and in any future rate proceeding.
12. The Stipulating Parties request that this stipulation be approved and made part of the record.
13. This Stipulation may be executed in counterparts, which shall together constitute one and the same stipulation agreement.

Stipulating parties:

For the City of Pittsburgh:

Date: 8/21/20

For the Pittsburgh Water & Sewer Authority:

Dann M. O'Neil

Date: 8/21/20

For the Bureau of Investigation & Enforcement:

Date:

For the Office of Consumer Advocate:

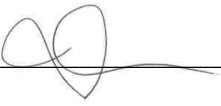
Date:

For the Office of Small Business Advocate:

Date:

10. If a party withdraws its recommendation regarding a Municipal rate through surrebuttal testimony, the Stipulating Parties agree they will not seek to prevent entry into the record of any testimony that the withdrawing party submitted prior to surrebuttal testimony related to the Municipal rate to the extent the recommendation contained in such prior testimony related to the Municipal rate has been withdrawn through surrebuttal testimony.
11. This Stipulation is without admission or prejudice in any other part of these rate proceedings and in any future rate proceeding.
12. The Stipulating Parties request that this stipulation be approved and made part of the record.
13. This Stipulation may be executed in counterparts, which shall together constitute one and the same stipulation agreement.

Stipulating parties:

For the City of Pittsburgh:	_____	Date:
For the Pittsburgh Water & Sewer Authority:	_____	Date:
For the Bureau of Investigation & Enforcement:	 _____	Date: 8/21/20
For the Office of Consumer Advocate:	_____	Date:
For the Office of Small Business Advocate:	_____	Date:

10. If a party withdraws its recommendation regarding a Municipal rate through surrebuttal testimony, the Stipulating Parties agree they will not seek to prevent entry into the record of any testimony that the withdrawing party submitted prior to surrebuttal testimony related to the Municipal rate to the extent the recommendation contained in such prior testimony related to the Municipal rate has been withdrawn through surrebuttal testimony.
11. This Stipulation is without admission or prejudice in any other part of these rate proceedings and in any future rate proceeding.
12. The Stipulating Parties request that this stipulation be approved and made part of the record.
13. This Stipulation may be executed in counterparts, which shall together constitute one and the same stipulation agreement.

Stipulating parties:

For the City of Pittsburgh:	<u>Thomas J. Sniatak</u>	Date: 8/21/20
For the Pittsburgh Water & Sewer Authority:	_____	Date:
For the Bureau of Investigation & Enforcement:	_____	Date:
For the Office of Consumer Advocate:	<u>Christine Maloni Hoover</u>	Date: 8/21/20
For the Office of Small Business Advocate:	_____	Date:

Party-by- Party Compliance With Paragraph 8

**Status Report for Each Party's Plan for Complying With Paragraph 8 of the
Stipulation Recognizing Impact of Act 70 Upon PWSA's Municipal Rate Proposal**

The Pittsburgh Water and Sewer Authority

On September 17, 2020, PWSA withdrew the proposals set forth in its Supplemental Direct Testimony addressing issues governed by the Cooperation Agreement and reverted to its initial proposals as set forth in its March 6, 2020 initial filing. To effectuate the withdrawal of its revised positions regarding City Cooperation issues, PWSA redacted the relevant portions of its Supplemental Direct Testimony and served copies of the revised Supplemental Direct Testimony, as indicated below.

Witness	St. No.	Redacted Version?
Robert A. Weimar	St. No. 1-SD As Revised due to passage of Act 70	Yes
Debbie M. Lestitian	St. No. 2-SD As Revised due to passage of Act 70	Yes
Jennifer Presutti	St. No. 3-SD As Revised due to passage of Act 70	Yes
Barry King, P.E.	St. No. 4-SD	No
Edward Barca	St. No. 5-SD	No
Thomas F. Huestis	St. No. 6-SD	No
Harold J. Smith	St. No. 7-SD As Revised due to passage of Act 70	Yes
Julie Quigley	St. No. 8-SD As Revised due to passage of Act 70	Yes
Beth Dutton	St. No. 9-SD	No

PWSA is not proposing any changes to its subsequently served written testimony (rebuttal and rejoinder) as a result of Act 70.

Bureau of Investigation and Enforcement

Pursuant to Paragraph 8(iv) of the Stipulation, I&E has elected the option of addressing the portions of its pre-submitted testimony and exhibits that are withdrawn by way of surrebuttal testimony. Specifically, in their respective pieces of surrebuttal testimony, I&E witnesses Spadaccio, Cline, and Kubas reflected updates of their positions to account for passage of Act 70. In addition, these witnesses testified substantively as to the withdrawal of any positions in direct testimony that conflicted with the subsequently-passed Act 70. I&E notes that witness Patel's testimonies were not impacted by Act 70. Finally, I&E notes that it negotiated with all Stipulating Parties to ensure that its method of addressing Act 70 would be a mutually acceptable way to reflect the imposition of Act 70 upon its case.

Office of Consumer Advocate

OCA determined that no action by OCA is necessary to comply with Paragraph 8 of the Stipulation Recognizing Impact of Act 70 Upon PWSA's Municipal Rate Proposal.

Office of Small Business Advocate

The OSBA intends to withdraw Exhibit BK-1 in OSBA Statement No. 1.

City of Pittsburgh

The City of Pittsburgh intends to withdraw the following testimony from The City of Pittsburgh's Statement. No. 2 (Direct Testimony of Howard J. Woods, Jr., P.E.):

Page: line numbers

9:16 – 10:3 including footnote 3

10:5-12

17:4-10

19:18-22

22:14-24:13 including footnote 10

Pittsburgh UNITED

Pittsburgh UNITED is not a party to the Stipulation regarding to Act 70 and is not making any revisions to its previously served testimony pursuant to the Stipulation or as a result of revisions made by the other parties due to the Stipulation.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017951 (water)
	:		C-2020-3019348
v.	:		C-2020-3019305
	:		
Pittsburgh Water and Sewer Authority - Water	:		
	:		
Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017970 (wastewater)
	:		C-2020-3019349
v.	:		C-2020-3019302
	:		
Pittsburgh Water and Sewer Authority - Wastewater	:		
	:		
Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to Authorize the Pay-As-You-Go Method of Financing	:	Docket Nos.	P-2020-3019019
	:		
	:		
	:		
	:		
	:		

**DIRECT TESTIMONY
OF DANIEL GILMAN,
CHIEF OF STAFF TO MAYOR WILLIAM PEDUTO
ON BEHALF OF THE CITY OF PITTSBURGH**

1 **Q. Please state your name and current employment.**

2 A. I am Daniel Gilman, Chief of Staff to the Honorable Bill Peduto, Mayor of the City of
3 Pittsburgh (City).

4
5 **Q. Please describe your educational background and work experience.**

6 A. I am a 2004 graduate of Carnegie Mellon University, where my major was Ethics, History
7 & Public Policy. I have been involved in Pittsburgh city government since, first as a staffer
8 for then-Councilman Peduto who represented Pittsburgh's District 8 (Oakland, Point
9 Breeze, Shadyside, and Squirrel Hill), then as his chief of staff until he was elected Mayor
10 in 2013. In that same municipal election, I was elected to fill Councilman Peduto's vacated
11 City Council seat. I was reelected in 2017, but resigned, effective January 3, 2018, to accept
12 my present position as Mayor Peduto's Chief of Staff.

13
14 **Q. Please describe your responsibilities as the Mayor's Chief of Staff.**

15 A. I work with the Mayor to implement his vision for the City, which means I have
16 responsibility for the oversight of the leadership and operations of all City departments and
17 responsibility for major projects and policy initiatives that the City undertakes or that affect
18 the City. For example, during 2019, a major issue for the City was the renegotiation of the
19 City's 1995 Cooperation Agreement with the Pittsburgh Water and Sewer Authority
20 (PWSA) that the 2017 amendments to the Public Utility Code necessitated that gave the
21 Pennsylvania Public Utility Commission (PUC) jurisdiction over PWSA's rates and
22 service. On behalf of the City, I negotiated the 2019 Cooperation Agreement with PWSA
23 representatives. At this writing, I spend most of my time managing the City's efforts to

1 deal with the COVID-19 pandemic.

2

3 **Q. Why did the City renegotiate the 1995 Cooperation Agreement?**

4 A. The City and PWSA understood that PUC jurisdiction and new regulatory responsibilities
5 affected aspects of the 1995 Capital Lease Agreement and the 1995 Cooperation
6 Agreement. Therefore, they had to revisit these agreements because of the new regulatory
7 responsibilities. For example, the 2019 Cooperation Agreement recognizes PWSA, an
8 independent municipal authority, is transitioning from a municipal authority that was not
9 subject to the PUC's authority and oversight to a municipal authority that is subject to the
10 PUC's authority and oversight, assuming an identity that is more akin to a traditional public
11 utility rather than an independent authority. On the other hand, the City, the owner of the
12 water and sewer system, is transitioning from its ownership position—allowing it
13 unfettered access to *its* water and sewer system—to become a customer, paying a public
14 utility for its access to water and sewer services.

15

16 **Q. Why was renegotiation of the 1995 Cooperation Agreement a major issue for the**
17 **City?**

18 A. The City and PWSA negotiated the 2019 Cooperation Agreement, in part, to balance the
19 significant change, understanding each party must take specific positions: one to protect its
20 customers and the other to protect its residents. As the majority of PWSA's customers are
21 City taxpayers, they will eventually bear the economic burden in one form or another (i.e.,
22 higher rates or higher taxes). For the City, it had to consider the fiscal consequences of the
23 new arrangement because it would have a direct impact on the City's operating budget.

1 The City is not a private business. It cannot simply shift its resources to the cost and
2 expense of water and sewer services. The City had to consider its overall budget, providing
3 all necessary services to protect the general health and welfare of our residents, particularly
4 those who have low income or who are otherwise underserved and therefore, rely upon the
5 City to provide these necessities. It had to add the additional cost of water and sewer
6 services into its budget in a manner that would not jeopardize the other necessary services,
7 including the employment of City workers to provide those services. The 2019
8 Cooperation Agreement recognized the transitions in the relationship, allowing each party
9 the opportunity to implement these significant changes in a reasonable period of time to
10 benefit the taxpayers and ratepayers, respectively, recognizing the budgetary impact to both
11 PWSA and the City, respectively.

12
13 **Q. Please provide an overview of the general goals of the renegotiation.**

14 **A.** We start from the premise that the 1995 Cooperation Agreement and the 1995 Capital
15 Lease Agreement must be read together. The City and PWSA have always viewed these
16 Agreements as part of a unified, single package. These Agreements memorialize
17 negotiated commitments between the City and PWSA. The City wanted to accomplish the
18 2019 transition in a manner that, where possible, is as consistent as possible with the 1995
19 Cooperation Agreement and the 1995 Capital Lease Agreement, which provide PWSA
20 with the option to purchase the water and sewer system in 2025. Overall, the City entered
21 the negotiation with the goal of protecting the public's best interest. The City—and
22 PWSA—wanted an agreement that would over time be fair to the residents/customers
23 residing within the City of Pittsburgh – the individuals who are PWSA ratepayers *and* City

1 taxpayers.

2 We, the City and PWSA, also wanted an agreement that would be fair to the City, the owner
3 who would pay for water and sewer service, and PWSA, the party assuming the duty, and
4 now, the mission to provide quality water service and sewer transmission service,
5 consistent with the public's best interest. For example, we wanted the new agreement to
6 confirm PWSA's current day-to-day control and its future ownership (circa 2025) of the
7 water and sewer transmission facilities and the services that support those facilities.

8 The City, and presumably PWSA, recognized that, pursuant to their current positions and
9 until such point in time where PWSA assumes full ownership of the water and sewer
10 system, it had to consider Pennsylvania law. For example, exposure to claims for injuries
11 and damages. The City and PWSA are municipal entities, political subdivisions, that
12 receive a certain grant of general immunity, subject to limited exceptions to that immunity.
13 One of these exceptions includes claims and suits arising from alleged dangerous
14 conditions of the facilities of sewer and water owned by a local agency and located within
15 its rights-of-way. Until such time that PWSA assumes full ownership of the water and
16 sewer transmission facilities, the City remains open to claims and lawsuits because neither
17 the City nor PWSA can expand or restrict the legislative grant of immunity or the
18 exceptions to the general grant of immunity in a manner that is inconsistent with the law.
19 Therefore, the City considered its exposure to liability and awards/damages as an element
20 of the overall discussion.

21 Further, we understood, considered, and included in the negotiation additional factors, such
22 as the up-front rental payment PWSA paid to the City; the annual allotment of water to the

1 City for its use, which is actually a use that benefits our taxpayers/PWSA's customers; and
2 compensation for services the City provides to/for PWSA for items, such as pension
3 benefits paid to certain PWSA employees, who transitioned to PWSA employment, and
4 street cleaning, which is performed by City employees with City equipment, saving PWSA
5 capital and budgetary expenses.

6
7 **Q. What is the purpose of your testimony in this proceeding?**

8 A. My testimony will give the City's perspective on the past and future relationship between
9 the City and PWSA, providing important context for the PUC's consideration of the 2019
10 Cooperation Agreement; an explanation for key provisions in the 2019 Cooperation
11 Agreement; and the facts concerning the disastrous consequences for the City and its
12 residents if the PUC modifies the terms of the 2019 Cooperation Agreement in a way that
13 disrupts the careful balance of interests and mutual benefits it achieves, not only with
14 respect to transitional provisions that mitigate rate shock by phasing in changes that require
15 the City to pay for services PWSA previously provided "free of charge" but are actually a
16 form of consideration under the 1995 Cooperation Agreement and Capital Lease
17 Agreement, but also with respect to the valuable services each provides the other. In short,
18 the negotiated agreement benefits all by the synergies it provides.

19
20 **Q. Have you reviewed the direct testimony of PWSA Chief Corporate Counsel and Chief
21 of Administration Debbie M. Lestitian, PWSA Statement No. 1 filed in this
22 proceeding on June 5, 2020?**

23 A. I have, and I am in general agreement with her comments. In particular, I agree with her

1 that the provisions of the 2019 Cooperation Agreement are just and reasonable given the
2 historical relationship between the City and PWSA and the fact that the City will continue
3 to own the assets it leases to PWSA until 2025, and that the Agreement is a “logical next
4 step toward a more traditional utility-customer relationship between PWSA and the City.”
5 PWSA Statement No. 1 at 11:19-20. The Agreement embodies gives and takes on both
6 sides that, as she says and I know well, are the “product of months of negotiations.”

7
8 *1. Relationship Between the City and PWSA*

9 **Q. Please briefly describe the historical relationship between the City and PWSA.**

10 A. The City has been responsible for providing water service to its residents for over two
11 centuries. Over the many years, before the City established PWSA in 1984, the City built
12 a system of pumping stations, reservoirs, pretreatment plants, filtration plants, and
13 distribution mains to provide water to City residents, to municipally owned buildings, and
14 City instrumentalities, such as the Pittsburgh Zoo. In the 1880s, the City began
15 constructing a municipal sewer system, which collected sewage throughout the City. After
16 World War II, Allegheny County established the Allegheny County Sanitary Authority
17 (ALCOSAN), which commenced county-wide sewage treatment in 1959.

18 In 1984, the City created PWSA, under the Municipality Authorities Act of 1945, primarily
19 to oversee a capital improvement program to refurbish the water system's infrastructure.
20 The City and PWSA entered into a 1984 Lease and Management Agreement in which the
21 City leased to PWSA the City's existing water and sewer systems, transferred financial
22 responsibility for operating and maintenance for the systems to PWSA, and established the
23 City as agent for PWSA to continue providing all services needed to operate the water and

1 sewer systems, with PWSA reimbursing the City for all expenses actually incurred and
2 expended by the City.

3 In 1995, the City and PWSA modified this arrangement, replacing the 1984 Lease and
4 Management Agreement with the 1995 Cooperation Agreement and the concurrent 1995
5 Capital Lease Agreement. Together, the 1995 agreements ended the agency relationship
6 in which City employees were responsible for day-to-day operations of the facilities and
7 transferred operational control of the water and sewer systems to PWSA. Most of the City
8 employees then responsible for day-to-day operations of the facilities became PWSA
9 employees. The 1995 agreements created an arrangement in which PWSA paid the City a
10 front-end loaded rental fee of \$96,017,249.60 for the 30 year lease of the water and sewer
11 systems; granted the City the right to receive up to 600,000,000 gallons of water each year
12 until 2035 to be used by the City, its departments, agencies, and instrumentalities (i.e.,
13 Pittsburgh Zoo, Phipps Conservatory, National Aviary in Pittsburgh, and Schenley Golf
14 Course); and allowed reimbursements for any remaining "actual direct expenses" the City
15 incurred on behalf of PWSA. In exchange, PWSA received possession of the water and
16 sewer systems and related facilities and the right to purchase the water and sewer systems
17 outright for \$1 on September 1, 2025, and the ability to utilize existing City infrastructure
18 and manpower to procure necessary services the City was already geared up to provide to
19 itself, such as specified engineering, communications, vehicle maintenance, legal,
20 information, and financial services, on a fee for services basis, so as to avoid PWSA's less
21 efficient procurement of those services either in-house or from third parties.

1 **Q. Can you identify and describe the documents marked as Exhibits DG-1 and DG-2?**

2 A. Yes. Exhibit DG-1 is the 1995 Cooperation Agreement. Exhibit DG-2 is the 1995 Capital
3 Lease Agreement.

4
5 **Q. Was the \$96 million dollar up-front rental fee charged in the 1995 Capital Lease
6 Agreement based on a valuation of the City's water and sewer facilities?**

7 A. To be clear, the total rental fee was approximately \$101.4 million, but PWSA took
8 advantage of discounts for prepayments, reducing the amount paid to about \$96 million.
9 To my knowledge, the payment, which effectively will operate as the purchase price given
10 the agreement's 2025 sale for \$1, was a negotiated price based more on the amount the
11 City needed to ease financial difficulties the City faced in 1995 than the actual value of the
12 water and sewer facilities transferred. Critics of the Capital Lease/Cooperation agreement
13 package at the time who favored privatization of the water and sewer systems maintained
14 that the transferred facilities were actually worth up to more than double the amount PWSA
15 actually paid. The Allegheny Institute for Public Policy, for example, authored a 1995
16 study that concluded "[b]ased on discount cash flow techniques used in free market
17 transactions" that the systems had an "intrinsic valuation of \$152.3 to \$211 million."¹ That
18 financial analysis squares with City witness Woods' observation, based on net book asset
19 value rather than cash flow, that in 1995 the book value less depreciation of the water and
20 sewer system assets was \$172,456,000. City of Pittsburgh's Statement No. 2 at 8:14-9:2.

21

¹ McDonald and Hagan, "A Financial Valuation of the Pittsburgh Water and Sewers System," Allegheny Institute Report #95-04 September 1995. https://www.alleghenyinstitute.org/wp-content/uploads/components/com_reports/uploads/95_04.pdf

1 **Q. What in your view is the significance of the fact that the rental payment under the**
2 **Capital Lease Agreement undervalued the assets leased to PWSA?**

3 A. It confirms what is obvious from a review of the 1995 Cooperation Agreement and the
4 1995 Capital Lease Agreement; they are part of the same transaction, which transitioned
5 the City's relationship with PWSA from one in which the City continued to perform the
6 actual operations of the water and sewer systems as agent for PWSA, to one in which
7 PWSA itself operated the systems and would own them outright after expiration of the
8 Capital Lease Agreement in 2025. Consideration to the City for that transfer of assets came
9 in the form of both the rental payment in the Capital Lease Agreement and the obligations
10 to the City PWSA undertook in the 1995 Cooperation Agreement, including the
11 commitment to provide the City with up to 600,000,000 gallons of water annually free of
12 charge for the City's use.

13
14 **Q. Are there other indicators that the two 1995 agreements must be read together?**

15 A. Yes. For example, when then-Mayor Murphy proposed to Pittsburgh City Council in April
16 1995 to make PWSA "a fully operating authority" by terminating the existing 1984 Lease
17 and Management Agreement between the City and PWSA, he did so in the form of two
18 simultaneously proposed resolutions, one to adopt the 1995 Cooperation Agreement and
19 the other to adopt the 1995 Capital Lease Agreement. The two agreements thus were
20 viewed as a package from their inception and have been described that way since, including
21 in PWSA's bond offering documents.²

² See, e.g., 2008 PWSA Bond Offering Official Statement at A-2 ("Concurrently with entering into the Capital Lease Agreement, the City and the Authority entered into a Cooperation Agreement...").
https://apps.pittsburghpa.gov/pwsa/2008_Final_OS_B_C_D-2.pdf

1 **Q. Given this history, what has been the City's perspective on PWSA's commitment in**
2 **the 1995 Cooperation Agreement to provide the City with up to 600,000,000 gallons**
3 **of water annually free of charge for the City's use through that Agreement's 40 year**
4 **term?**

5 A. The City's perspective has been that the no-charge water allotment was part of the
6 consideration for the 1995 lease and sale of assets, consistent with the reality that pre-
7 PWSA the City historically supplied its own water usage from the facilities it owned and
8 operated without rendering a bill to itself, and consistent with the fact that the City will
9 continue to own the PWSA assets through September 1, 2025. I would sum it up by saying
10 that the no-charge water allotment was an integral part of the 1995 deal and that without
11 the 1995 Cooperation Agreement there would have been no 1995 Capital Lease
12 Agreement.

13
14 **Q. Has the City changed its view concerning its entitlement to the water allotment?**

15 A. With the 2017 legislation subjecting PWSA to PUC regulation, and the lead remediation
16 and other infrastructure improvement challenges that the City on its own initiative
17 promoted to best position PWSA to meet successfully for the benefit of all Pittsburghers,
18 the City recognized that its relationship with PWSA would need to evolve, the 1995
19 Cooperation would need to be renegotiated, and the City would need to begin to pay a
20 reasonable rate for water usage at City-owned and affiliated properties and take other steps
21 to assure that the future relationship between the City and PWSA will be more arm's length
22 than in the past. I took that view with me into the negotiations with PWSA that culminated
23 in the 2019 Cooperation Agreement, and I believe the 2019 Cooperation Agreement as

1 executed fairly implements that result. On the issue of the water allotment, it implements
2 an end to free usage by the City, requires metering of all City properties, and immediately
3 imposes a payment obligation on the City, while mitigating the impact of the full expense
4 by phasing in responsibility over a 4 year period (20%/40%/60%/80%/100%) so that by
5 the fifth year, 2024, the City will pay 100% of the usage charges PWSA is permitted to
6 impose. We used a similar phase-in approach to other changes introduced in the 2019
7 Cooperation Agreement, to the benefit of both the City and PWSA, and, more important,
8 to Pittsburgh residents who are both taxpayers and ratepayers.

9
10 2. Key Provisions of the 2019 Cooperation Agreement

11 **Q. Please enumerate the key provisions in the 2019 Cooperation Agreement that you**
12 **negotiated with PWSA.**

13 A. My negotiations centered on Sections 3.1 and 3.2 (services to be provided between the City
14 and PWSA); 5.1 and 5.2 (water and sewer lines to and within City properties); 6.1 (subsidy
15 payments for City residents Pennsylvania American Water Company serves); 6.2 (water to
16 City and fire hydrant charges); 8 (City payroll tax) and 9 (PURTA tax); and 15 (relationship
17 between PWSA and the City). Most of the other provisions in the 2019 Cooperation
18 Agreement were carried over with minor modifications from the 1995 Cooperation
19 Agreement. The animating principle in all of these provisions was to create a sensible
20 division of cost and responsibility with respect to the provision of water and sewer service
21 to City residents that is fair to City taxpayers and fair to PWSA ratepayers based on the
22 history of the relationship, the existing sunk costs of each, and the respective capabilities
23 of the City and PWSA.

1 **Q. Of these, which are the most critical to the City?**

2 A. All are important, even the provisions that are objectively unfavorable to the City, because
3 the Agreement is the result of a careful balancing of interests that the City and PWSA each
4 brought to the negotiation, and the undoing of one upsets the balance among all that the
5 parties agreed to after long hours of negotiation. That said, the City is most interested in
6 preserving 6.2, which commits the City to paying 100% of the water and sewer charges
7 PWSA's PUC-approved tariffs levy on the City, but phases in that obligation over the
8 period 2020-2024 on the percentage basis I described. The City faces dire economic and
9 budgetary obstacles if the PUC rejects the Section 6.2 phase-in approach and requires the
10 City to pay those charges at the 100% level immediately.

11
12 **Q. Please address Sections 3.1 and 3.2 (services to be provided between the City and**
13 **PWSA).**

14 A. In these sections, the City and PWSA agreed to provide each other with services as needed
15 and requested based on "Actual Direct Expenses," defined in the Agreement to mean
16 identifiable and documented direct costs. For services the City may provide PWSA, PWSA
17 can benefit from the fact that, for example, the City already maintains and fuels a vehicle
18 fleet for a variety of purposes; there is no need for PWSA to go to the expense of
19 duplicating those support services for its vehicles. Of note is the provision in Section 3.1
20 that the City will provide the street sweeping services that both the City and PWSA need
21 to do, and bill PWSA for half the cost. The City already provides street sweeping as part
22 of its municipal services; PWSA is required to do it as part of its required stormwater
23 management environmental obligations. It makes practical and economic sense for both

1 parties that the City perform the function and split the cost 50/50 with PWSA.

2
3 **Q. Please address Sections 5.1 and 5.2 (water and sewer lines to and within City**
4 **properties).**

5 A. Section 5.2 recognizes that PWSA's commercial customers other than the City presently
6 are responsible for the operation, maintenance, repair, and replacement of the water and
7 sewer service laterals that serve their premises, whereas PWSA presently assumes that
8 obligation for City-owned properties and gradually transitions that expense to the City so
9 that by 2024 the City will be treated for this purpose like all other commercial customers.
10 The transition approach method here is similar to the 2020-2024 gradual phase-in approach
11 (20%/40%/60%/80%/100%) we agreed on for the city's obligation to pay for water usage,
12 but instead begins in 2021 and ends in 2025. The only exception to the City assuming
13 responsibility for service laterals to its own properties is with service laterals in City parks
14 larger than 50 acres, where the responsibility will remain with PWSA, including
15 responsibility for the installation of meters and meter vaults. In exchange, the City has
16 agreed in Section 5.2 to PWSA's practice for other customers to share 50% of the cost of
17 meter and meter vault installation, even though the PUC's regulations set the general
18 expectation that the utility, in this case PWSA, will bear such costs alone.

19
20 **Q. Please address Section 6.1 (subsidy payments for City residents Pennsylvania**
21 **American Water Company serves).**

22 A. Pennsylvania American Water Company (PAWC) serves certain sections of the City rather
23 than PWSA, and until recently, PAWC charged higher rates. The City, and then PWSA,

1 subsidized the difference so that all City residents were billed only the equivalent of
2 PWSA's lower rates. Section 6.1 addresses the City's agreement with PWSA as part of the
3 give and take negotiation of the 2019 Cooperation Agreement to assume responsibility for
4 that subsidy payment. As it happens, there no longer is a need for the subsidy because
5 PAWC's rates are no longer higher than PWSA's rates, so this provision is no longer
6 operative.

7
8 **Q. Please address Section 6.2 (water to City and fire hydrant charges).**

9 A. I have already alluded to the gist of, and the importance of, this section in previous
10 comments. For the City, this provision is the part of the 2019 Cooperation Agreement that
11 represents the biggest "give" by the City, because the no cost water allotment was integral
12 to the 1995 Capital Lease Agreement and Cooperation Agreement that transferred
13 possession and control of the City's water and sewer systems to PWSA. Retention of
14 Section 6.2 is critical to the City's economic well-being. It implements an end to the City's
15 free usage, requires metering of all City properties, and immediately imposes a payment
16 obligation on the City, while mitigating the impact of the full expense by phasing in
17 responsibility over a 4 year period (20%/40%/60%/80%/100%), so that by the fifth year,
18 2024, the City will pay 100% of the usage charges PWSA is permitted to impose. I note
19 that the City has agreed to this schedule and the obligation to pay for its usage at the 100%
20 level as of January 1, 2024, at a time when the City will still own the water and sewer
21 assets, and almost two years before PWSA can acquire them under the 1995 Agreements.
22 Inexplicably, the PUC has indicated in recent orders that it will reject this central provision
23 of the 2019 Cooperation Agreement and order the City's full payment for usage as of

1 October 3, 2019.³

2

3 **Q. If the PUC rejects Section 6.2 of the 2019 Cooperation Agreement what would be the**
4 **effect on the City?**

5 A. If the PUC rejects Section 6.2, as the PUC has indicated it intends to do, it would, in the
6 City's view, gut the 2019 Cooperation Agreement, upend the City's fiscal plans, and
7 expose the most vulnerable City residents to the brunt of unavoidable budget cuts, all at a
8 time when the City has recently emerged from Act 47 "financially distressed" status and
9 now is in the throes of dealing with the revenue shortfalls associated with the effects of the
10 COVID-19 pandemic. I will address these issues in more detail later in my testimony.

11

12 **Q. Please address Section 8 (City payroll tax) and Section 9 (PURTA tax).**

13 A. Throughout the negotiations between the City and PWSA, PWSA's mantra was that it
14 should be treated in the way the City interacts with any other public utility. As the other
15 public utilities that serve the City are required to pay City payroll tax and the PURTA tax,
16 the City proposed, and PWSA agreed as part of the negotiated settlement reflected in the
17 Cooperation Agreement, to pay those taxes. This comports, in my view, with the PUC's
18 requirement that the relationship between the City and PWSA be on a transactional basis.
19 Similar to the 2020-2024 phase-in of other items requiring monetary payment, the PURTA
20 tax payment PWSA pays to the City would receive the same 20/40/60/80/100 phase-in.

21

³ Docket Nos. M-2018-2640802 and M-2018-2640803, March 26, 2020 and June 18, 2020.

1 **Q. Please address Section 15 (relationship between PWSA and the City).**

2 A. This section states expressly what I believe the Agreement accomplishes as a whole: the
3 City agrees that henceforth interactions between the City and PWSA will be on a “business-
4 like, transactional basis,” and PWSA agrees that the City will treat PWSA under the
5 provisions of the Agreement in the way it treats other utilities operating in the City.

6

7 **Q. Do you have any additional comments about the particular provisions of the 2019**
8 **Cooperation Agreement or your negotiation of it on behalf of the City?**

9 A. I would only reemphasize that the City and PWSA worked long, hard, and in good faith to
10 hammer out the terms of the 2019 Cooperation Agreement, that it represents difficult
11 concessions both sides made, and that it creates a template for moving forward towards a
12 workable separation between the City and PWSA in the manner the legislature sought in
13 the 2017 legislation. I ask on behalf of the City that the PUC approve it in its entirety,
14 notwithstanding previous indications that the PUC may reject its critical phase-in
15 provisions.

16

17 **Q. Apart from the payment phase-in provisions, are there other aspects of the 2019**
18 **Cooperation Agreement that have a significant economic impact?**

19 A. Yes. Again, the 2019 Cooperation Agreement is a carefully balanced package that must be
20 reviewed and approved as a whole. It provides both economic benefits to the City and to
21 PWSA, consistent with a more transactional approach to the relationship. For example,
22 just as the City now will be paying for water and sewer usage and ALCOSAN charges,
23 PWSA will for the first time be reimbursing the City for pension costs for PWSA

1 employees that participate in the City's pension plan, for permit and license fees, for
2 payroll and PURTA taxes, and for street sweeping. The City and PWSA each need to
3 receive the benefits they bargained for. These are synergies and mutual benefits of
4 cooperating and maximizing cost reduction or control opportunities that benefit both.
5 Stripping any of these features from this carefully negotiated, integrated, and crafted
6 Cooperation Agreement, but assuming other benefits will remain, is bad policy and a bad
7 result that does not collectively benefit the interests of all. The whole idea of a free service
8 not in exchange for other benefits and the reality of who owns the assets along with
9 attendant strings is a fallacy and does not reflect how negotiated solutions to complex
10 problems are achieved by sophisticated parties to an agreement, such as the City and
11 PWSA.

12
13 3. Consequences of Disrupting Phase-in Provisions for Payment for Services

14 **Q. You stated earlier that in entering the negotiations for the 2019 Cooperation**
15 **Agreement, the City was concerned that any changes in the financial arrangements**
16 **between the City and PWSA that could strain the City's budget be phased in**
17 **gradually, and that Section 6.2 of the Agreement accomplishes that goal. Why is the**
18 **agreed-upon gradual phase-in of payment for water and fire hydrant service so**
19 **important to the City?**

20 **A.** As the City came to realize that the 1995 Cooperation Agreement would need to be
21 renegotiated and the no-cost water allotment likely would end, such that the City would be
22 required to pay for its water and sewer usage at City properties, including public buildings,
23 City parks, and that City instrumentalities, such as the Pittsburgh Zoo, Phipps

1 Conservatory, the National Aviary in Pittsburgh, and Schenley Golf Course would be
2 affected, we realized right away that immediate payment at the 100% level was not a
3 realistic possibility. The City was just emerging in early 2018 from a 14-year period (2004-
4 2018) of Act 47 "financially distressed" status. A municipality is placed in Act 47
5 financially distressed status when its fiscal integrity is jeopardized and threatens its ability
6 to provide for the health, safety, and welfare of its citizens. As part of its recovery plan,
7 the City, during this period, had imposed new taxes and raised the rate of existing taxes.
8 During the Act 47 years, the City also implemented deep budget cuts. We knew going into
9 the negotiations with PWSA that it would be extremely difficult to either raise taxes or
10 make further cuts in existing expenditures to accommodate a flash cut to paying 100% of
11 charges for water and sewer services that the City had never in its history paid out-of-
12 pocket to receive.

13
14 **Q. Are the City revenue circumstances any better now than they were when the City and**
15 **PWSA executed the 2019 Cooperation Agreement in October 2019?**

16 A. Present prospects for raising revenue through taxes are, of course, much worse since
17 October 2019 because of the business and entertainment event closures, unemployment,
18 and related economic devastation the COVID-19 pandemic caused that began in March
19 2020. Tax collections from March to May 2020 were down 25% from the comparable
20 period in 2019, and we estimate that revenues for the entirety of 2020 will be down 21%
21 from budget. We do not expect to recover fully from a revenue perspective until 2025. The
22 tax revenues that are most impacted by economic hardship triggered by the pandemic
23 are payroll, parking, earned income, and property taxes; these four taxes alone could see

1 \$97 million in losses just this year. In short, revenues are down and are likely to stay down
2 for the foreseeable future, requiring the City to make hard choices without even considering
3 the quadrupling of water expense that a flash cut to 100% payment for usage would mean.
4 In response to the pandemic-induced revenue drop, the City has already instituted a hiring
5 freeze across all departments and is considering 10% cuts in non-personnel spending across
6 all departments.

7
8 **Q. As far as you can tell, does the I&E positions or the recent Orders entered consider or**
9 **reflect any of this?**

10 A. Not that I can discern. We are very concerned that decisions are being made without the
11 best available investigation and information being presented to the Commission.

12
13 **Q. Where would the City find the revenue to immediately commence paying 100% of**
14 **PWSA's tariff rates for water and sewer services the City uses?**

15 A. The PUC's Bureau of I&E estimates that the value of the City's water usage is \$11.4
16 million. Docket Nos. M-2018-2640802 and M-2018-2640803, March 26, 2020 Order at
17 51-52. Other estimates, such as the one contained in the Pennsylvania Auditor General's
18 2017 audit of PWSA, estimates the bill at least \$6.8 million. *Id.* Recognizing that PWSA
19 has yet to have the PUC approve tariff rates for service to the City, the actual amount the
20 City would be required to pay at the 100% level is unknown. But I can say with certainty
21 that if the City were required immediately to pay PWSA's annual charges at the 100% level
22 in amounts anywhere near or above these estimates, the realistic options for finding the
23 money to do so would be to engage in further City job cuts, cuts in City services, and cuts

1 in discretionary spending. All of these measures would have a disproportionate adverse
2 impact on the City’s lower income residents.

3
4 **Q. Why would lower income City residents be disproportionately affected?**

5 A. Between Act 47 cuts and pandemic-related job cuts, the City has already pared back our
6 work force in many areas. Additional job cuts will have to come from public safety – police,
7 fire, paramedics, and EMTs. These cuts obviously will affect the individuals who will lose
8 employment, but also will affect the City residents they serve. City Police, paramedics, and
9 EMTs tend to be utilized to address medical issues, including hospital transport, more so
10 in low-income areas than in wealthier neighborhoods. Likewise, crime tends to be more of
11 a daily challenge for residents of low-income areas than wealthier areas, and public safety
12 cuts will have a greater impact on those low-income area residents.

13
14 **Q. Are there more concerns that are crucial to public interests and social safety and
15 welfare?**

16 A. Yes, when city services are cut, everyone is affected, but lower income individuals and
17 families with children are disproportionately affected because they are less financially able
18 to fill the void from other sources using their own funds, and thus more dependent on the
19 cut services. Cuts in discretionary spending typically work the same way. For instance:

- 20 • Closure or curtailing of operating hours at senior centers that become “cooling
21 centers” in summer months for needier seniors who lack home air conditioning will
22 disproportionately impact low-income seniors who may lack access to other
23 facilities with air conditioning or other social gathering venues, such as private

- 1 clubs;
- 2 • If the City is required immediately to pay 100% of the bill for water at City
3 swimming pools and splash parks, those facilities relied on disproportionately by
4 lower income residents and their children, will be curtailed or closed, as will low-
5 income residents lack access to privately funded members-only clubs;
 - 6 • Parks are another example. In more affluent neighborhoods, civic groups tend to
7 provide supplemental funding for parks and programs, but City parks in low-
8 income neighborhoods typically lack those outside resources; and
 - 9 • The impact on youth sports and the facilities that they play upon will be significant.
10 For example, youth sports leagues that rely on free City water at concession stands
11 will be affected.

12 So, the short answer is the City will need to cut discretionary services, and inevitably, the
13 poor and underprivileged will feel the brunt of it. I believe the Commission needs to factor
14 these considerations into any decision it makes concerning the transition the City and
15 PWSA are effectuating in the 2019 Cooperation Agreement, just as the City and PWSA
16 have done. To date, it appears to me that the Commission has overlooked, or has not been
17 sufficiently informed of, these hard, factual realities. They should be considered seriously
18 in the context of this proceeding and should prevail over any precise calculations of cost
19 causation or procedural arguments. The PUC is after all organized directly under the
20 Legislature and should have a broader view of all input before it makes a significant
21 decision that affects so many Pennsylvanians.

22

23

1 **Q. How would the gradual phase-in of payment for water and sewer services from 2020**
2 **to 2024, as agreed in the 2019 Cooperation Agreement, materially improve the City's**
3 **prospects for paying the bill and avoiding these negative impacts?**

4 A. The goal is to accommodate the new expense without upending existing budgets and
5 programs and jeopardizing existing obligations. The smaller the new expense to be
6 accommodated, the easier that goal is to achieve. In agreeing to the phase-in as presented
7 in the 2019 Cooperation Agreement, the City believed, and still believes, that the expense
8 can be met through a series of small changes year to year that in combination will increase
9 revenues and decrease expenses. In contrast, the burden of immediately paying 100% of a
10 large and brand-new expense disrupts existing budget projections and necessitates drastic
11 changes.

12
13 **Q. Since City taxpayers are the same population as PWSA ratepayers, does it really**
14 **cause harm if the City immediately moves to paying 100% for its usage, in that City**
15 **residents already are paying for the City's "free" water through PWSA rates that**
16 **would be lower but-for the free water allotment PWSA provides the City?**

17 A. The reality is much more complicated than the question suggests. Moving gradually to
18 100% payment for City usage, as the City has agreed to do in the 2019 Cooperation
19 Agreement rather than immediately as the PUC seems to think necessary, makes a big
20 difference. One reason is that even if there were a perfect match between City taxpayers
21 and PWSA ratepayers, and there is not, inequities would occur with immediate movement
22 to 100% because of timing differences between budget years, tax collection periods, and
23 PWSA rate setting. These timing differences can be smoothed out with the Cooperation

1 Agreement's agreed to four-year phase-in to 100%. More important are the differences in
2 respective taxpayer/ratepayer populations. For example, many low-income individuals
3 and families in the City reside in subsidized housing, where the PWSA customer is the
4 landlord and water is included in the rental payment; an increase in City taxes to enable the
5 City to pay for water immediately at the 100% level will adversely affect the low-income
6 population at many levels, but the City's payment of that revenue to PWSA will not confer
7 any economic benefit on those low-income renters in the form of a reduction in rental
8 payment or otherwise. Likewise, the City's need to cut jobs and services will have
9 immediate adverse effect on this population that may never provide them a benefit as
10 PWSA ratepayers. Another reason is that PWSA provides service to direct and bulk sale
11 customers outside the City, and while PWSA's provision of no-cost water to the City is
12 subsidized by rates those non-City customers pay, those non-City PWSA customers enjoy
13 the benefits of City services and use of City-affiliated entities without paying City taxes.
14 Half of the people who work in the City live in communities outside the City, and they
15 frequent and enjoy City-affiliated entities that presently receive no-cost water service, such
16 as the Pittsburgh Zoo, Phipps Conservatory, the National Aviary in Pittsburgh, and
17 Schenley Golf Course. Raising City taxes to pay for a flash cut to 100% payment for the
18 City and City-affiliated entities' water usage will immediately diminish the quality of life
19 in the City for all who use the City and its amenities, without conferring any immediate
20 benefit. Over time, of course, the proper matching of cost with cost causer for PWSA's
21 water and sewer services may be beneficial to all concerned, but the immediate shift the
22 PUC seems intent on ordering will create only inequity and hardship.

23

- 1 **Q. Does this conclude your direct testimony at this time?**
- 2 A. Yes, and I reserve the right to supplement this testimony as this matter proceeds.

'95 Co-Op Agreement

File No. 209
Bill No. 1823
No. 269 Vol. 129 Page 211

IN COMMITTEE ON PUBLIC WORKS, WATER &
ENVIRONMENTAL SERVICES. Wednesday,
April 10, 1995. Read and held until
Monday, April 10, 1995.

RESOLUTION

Authorizing a Cooperation Agreement and
amendments thereto with the Pittsburgh Water
and Sewer Authority to provide for the creation
of a fully operating authority.

In Council, April 4, 1995, referred
to Committee on Public Works, Water & Environmental Services

Lerida M. Johnson-Wasler
Clerk

In Committee on Public Works, Water & Environmental Services

APR 10 1995 19, ordered to
be returned to Council with an affirmative recom-
mendation.

Lerida M. Johnson-Wasler
Clerk

In Council APR 11 1995
Bill read, and passed

Lerida M. Johnson-Wasler
Clerk

Presented by
Mr. Ricciardi

No.

269

RESOLUTION

Authorizing a Cooperation Agreement and amendments thereto with the Pittsburgh Water and Sewer Authority to provide for the creation of a fully operating authority.

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1.

The Mayor is hereby authorized to execute, on behalf of the City of Pittsburgh and in final form approved by the City Solicitor, a Cooperation Agreement with the Pittsburgh Water and Sewer Authority (the "Authority") providing for

1. The provision of certain services to the Authority by the City and payment therefore.
2. The recognition of the American Federation of State, County and Municipal Employees, District Council 84, Local 2719 (AFSCME 719); the American Federation of State, County and Municipal Employees, District Council 84, Local 2037 (AFSCME 2037); and the Pittsburgh Joint Collective Bargaining Committee (the "PJCBC") as collective bargaining agent for the employees of the Authority previously employed by the City and members of these unions.
3. The establishment of a coordinated bargaining committee among the City, AFSCME 2719, AFSCME 2037 and the Pittsburgh Water and Sewer Authority for purpose of collective bargaining.

SECTION 2 Any Resolution or Ordinance or part thereof conflicting with the provisions of this Resolution is hereby repealed so far as the same affects this Resolution.

Enacted in Council, this 11th day of April A.D. 19 95

Attest: *Linda M. Johnson Wascow*
Clerk of Council.

[Signature]
President of Council.

Mayor's Office

April 18 19 95

Approved:

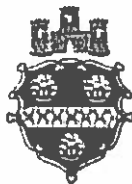
[Signature]
Mayor

Attest: *M. Linda Gangelwere*
Mayor's Secretary.

Recorded in Resolution Book, Vol. 129 Page 211, 24th day of April 19 95

APR 24 1995

EFFECTIVE DATE



City of Pittsburgh
Office of the Mayor

April 3, 1995

APR 3 1995 12:40

President and Members
City Council
City of Pittsburgh

Dear President and Members:

Attached are two resolutions dealing with the Pittsburgh Water and Sewer Authority which support our efforts to make the Authority a fully operating authority.

The first resolution deals with the termination of the management provisions of the existing Lease and Management Agreement dated as of March 1, 1984, between the City and the Authority and the replacement thereof by a Cooperation Agreement redefining the services for which the Authority will rely on the City. The terms of this Agreement with respect to the services to be performed by the City have not changed significantly since you approved Resolution No. 12 of 1995 (approved January 24, 1995) which addressed such a Cooperation Agreement. The form of the documentation, however, has changed.

The second resolution provides for the Authority to acquire control of the Water and Sewer System pursuant to a lease providing for up front, lump sum, all inclusive rent payments and provides that upon expiration of the term of the lease, the Authority will have the option to acquire the water system.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom Murphy".

Tom Murphy

COPY

COOPERATION AGREEMENT

Dated as of the 15th day June, 1995 but effective as of January 1, 1995 (the "Effective Date") between the City of Pittsburgh, a municipal corporation of the Commonwealth of Pennsylvania (the "City") and The Pittsburgh Water and Sewer Authority, a body corporate and politic, organized and existing under the laws of the Commonwealth of Pennsylvania (the "Authority").

WHEREAS, pursuant to a Lease and Management Agreement dated March 29, 1984 (the "Lease"), the Authority and the City provided for (i) the lease of the then existing water and sewer systems (the "System") to the Authority by the City; (ii) the operation and maintenance of the System by the Authority and (iii) the creation of an agency relationship between the Authority and City whereby the City provided services necessary to operate the System as agent of the Authority; and

WHEREAS, the City and the Authority have agreed to (i) provide for the termination of the City's status as an agent for the Authority, and (ii) provide for the provision of certain services to the Authority by the City;

NOW THEREFORE, in consideration of the mutual premises and intending to be legally bound hereby, the parties agree as follows:

I. DEFINITIONS:

"Capital Expenses" shall mean all expenditures made by the Authority or by the City, acting on behalf of the Authority, in carrying out the Construction Project and any Capital Additions to the System except for those hereinafter excluded. These expenditures shall include but not be limited to all engineering expenses whether undertaken by Authority or City employees or subcontracted by the City on behalf of the Authority.

"Actual Direct Expenses" shall mean all expenses directly related to the Authority (i.e., employee medical insurance premiums) and incurred by the City on behalf of the Authority. Expenses in this category are either documented by a third party invoice or specifically identifiable in the City's records. These expenses shall be determined by the City and the Authority on a mutually agree-upon basis. Actual Direct Expenses shall be paid monthly by the Authority to the City.

"Public Works Salaries and Wages" shall mean the apportioned share of Public Works Salaries and Wages directly attributable to the operation and maintenance of the sewer system. Public Works Salaries and Wages shall be paid monthly by the Authority to the City.

"Saw Mill Run Project" shall mean all those capital expenditures necessary to improve the sewer system in the Saw Mill Run Basin as set forth in pages 79 through 81 of the Green International, Inc. Water and Sewer Systems contract with the City dated December 9, 1983.

"Overhead Expenses" shall mean all expenses indirectly related to the Authority (i.e., payroll processing and benefits administration) and incurred by the City in relation to providing materials, services, supplies, etc. to the Authority under the terms of this Agreement. Expenses in this category are not documented by a third party invoice or specifically identifiable in the City's records. Overhead expense rates are to be determined annually by a City indirect cost allocation plan prepared by a certified public accounting firm. Overhead Expenses shall be paid monthly by the Authority to the City.

"System" shall mean all plants and equipment, structures, facilities, lands, easements, rights of way, water lines and sewer lines, patents, copyrights, contracts with municipalities or authorities outside the boundaries of the City, water treatment plants, pumping facilities, reservoirs, storage tanks, distribution mains, service lines and appurtenances, sewers, inlets, manholes, diversion structures, pumping stations, force mains, including but not limited to the assets described in Sections 3.3 and 4.3 of the System Evaluation prepared by Green International, Inc. and dated December 9, 1983, as amended and supplemented, which report is incorporated herein by reference.

II. TERMINATION OF AGENCY RELATIONSHIP:

A. As of the Effective Date the agency relationship between the City and the Authority provided for in the Lease is terminated. The Authority, as of the Effective Date, will assume sole responsibility and prerogative for management and operation of the System and all risks attenuated thereto.

B. As of the Effective Date all positions in the Water Department and certain positions in the Water and Sewer Division of the Department of Engineering and Construction and the Department of Public Works listed on Exhibit A hereto are eliminated from the City of Pittsburgh budget and those positions will be created by the Authority and filled in the manner required by the applicable collective bargaining agreements. City employees in those positions receiving worker's compensation at the time of the elimination of those positions by the City shall be entitled to the same position at the Authority upon their eligibility to return to work if such is within 24 months of their last day of work, all in accord with letters of the Authority dated December 19, 1994, to such employees.

C. The Authority shall recognize the American Federation of State, County and Municipal Employees, District Council 84, Local 2719 (AFSCME 2719); the American Federation of State, County and Municipal Employees, District Council 84, Local 2037 (AFSCME 2037); and the Pittsburgh Joint Collective Bargaining Committee (the "PJCBC") as the collective bargaining agents for the employees of the Authority previously employed by the City and shall negotiate with each of them a collective bargaining agreement that offers such employees wages, benefits and other terms and conditions that are at least equivalent to the terms and conditions offered to City employees for the contract term commencing January 1, 1995.

D. The Authority shall offer non-union employees whose positions are terminated by the City benefits which are at least equivalent to the benefits currently provided by the City and including continuity of participation in the City pension plan. ✓

E. The Authority certifies that it has accepted the provisions of the Workers' Compensation and Occupational Disease Acts, as amended and supplemented, insofar as the performance of any work of the Authority and that it will insure or provide for the insurance of its liability thereunder in accordance with the terms of the acts.

F. The City shall transfer, to the Authority on Effective Date or as soon as practicable thereafter, the documents, equipment, files, maps, records and reference data related to the System, (the "Inventory") acquired by the City for the benefit of the Authority since the effective date of the Lease. All Inventory transferred shall be listed and approved for transfer by the Department of General Services.

G. On a date to be determined by the Authority but not prior to January 1, 1996 and with a minimum of ninety (90) days written notice, the City shall transfer any personnel then assigned to the Water and Sewer Division of the Department of Engineering and Construction or any other City department and assigned to the operation and maintenance of the System as listed on Exhibit B, to the Authority. Any related equipment, files, maps, records and reference data shall also be transferred at that time.

H. All accounts receivable of the Authority, whether previously billed or not by the City, upon collection will be paid to the Authority.

I. As between the City and the Authority, it is understood and agreed that the City will continue to retain responsibility and liability for all Capital Expenses on the Saw Mill Run project and the Authority shall not be responsible for such Capital Expenses.

III. SERVICES TO BE PROVIDED BY THE CITY TO THE AUTHORITY:

A. Subject to the general supervision, direction and control of the Authority in the exercise and discharge of its public duties under the Municipality Authorities Act together with other applicable laws and regulations, the City shall render to the Authority the following services which shall be paid for as provided in Section VII below:

1. Department of Public Works:

The Department of Public Works shall continue to operate and maintain the sewer system portion of the System which is the sewers, inlets, manholes, diversion structures, pumping stations and force mains (the "Sewer System") within the City until such time as that function is transferred to the Authority, pursuant to Section II. G. The services to be provided shall include, but not be limited to, the following:

- (a) TV inspection of sewers.
- (b) Cleaning of sewers, catch basins and manholes.
- (c) Repair of catch basins and manholes.
- (d) Repair and/or replacement of sewers.
- (e) Administration of the Annual Catch Basin/Manhole Contract.
- (f) Administration of the Annual Catch Basin Cleaning Contract.
- (g) Operation and maintenance of diversion chambers and sewage pump stations.
- (h) Investigation of complaints and problems involving sewer system.
- (i) Working with Authority staff in the planning, design and construction phase management of capital improvement projects performed by the Authority.
- (j) Maintaining files, records and maps of the sewer system.
- (k) As long as the Asphalt Plant is owned by the City, furnish asphalt for use on restoration or construction projects performed or contracted by the Authority.
- (l) Any other services as may be agreed upon by the parties.

2. Department of Engineering and Construction:

- (a) Print plans, specifications and contract documents as required by the Authority.
- (b) Perform field survey services as requested by the Authority.
- (c) Any other services as may be agreed upon by the parties.

3. Department of General Services:

- (a) Provide telephone and data services for the Authority.
- (b) Provide radio communication services for the Authority.
- (c) Take and process photos prior to construction for various capital improvement projects as requested by the Authority.

- (d) Provide vehicles, maintenance, service, repairs and insurance as set forth in Article V hereof.
- (e) Furnish fuel and other fluids necessary for Authority vehicles and equipment.
- (f) Any other services as may be agreed upon by the parties.

4. Law Department:

- (a) Represent the Authority in actions against it as requested by the Authority.
- (b) Provide services for obtaining property and/or rights-of-way as requested by the Authority.
- (c) Provide services associated with assessments for sewer service as requested by the Authority.
- (d) Any other services as may be agreed upon by the parties.

5. City Information System:

- (a) Provide "mainframe computer services" needed for customer billing, financial reporting and processing of payroll and invoices and other functions.
- (b) Any other services as may be agreed upon by the parties.

6. Finance Department:

- (a) Issue payroll checks for the Authority staff.
- (b) Administer benefit programs, including but not limited to the pension plan, health care, dental benefits and worker's compensation claims (as provided herein).
- (c) Any other services as may be agreed upon by the parties.

B. The City shall furnish such other services to the Authority at such times as may be required and requested by the Authority.

IV. CITY CAPITAL PROJECTS:

From time to time the City undertakes capital improvement projects which include construction, replacement and/or modification of the System as a part of their improvements. The Authority shall reimburse the City for all Capital Expenses incurred by the City for such System improvements as follows:

A. Current Projects:

- (i) The Authority shall pay the City for all City capital projects which are under contract or completed as of the Effective Date but for which the City has not been fully reimbursed by the Authority. The City shall

invoice the Authority for reimbursement, with the invoice including backup data to adequately support the invoice. Such backup data shall include a description of the project, the System facilities constructed or to be constructed and the cost, not to be exceeded, of such improvements.

- (ii) To be reimbursed for City capital projects awarded after the Effective Date, which include construction replacement and/or modification of the System, the Authority shall approve the proposed construction plans and specifications, as they relate to the System improvements, prior to the City advertising for bids for the project. The City shall invoice the Authority for reimbursement with the invoice including backup data to adequately support the invoice.

V. VEHICLES:

A. The City hereby subleases to the Authority vehicles leased to the City by the Equipment Leasing Authority and currently being used by the Authority. The vehicles will be used in the ordinary and usual work for which they are designed provided that any such use is in conformity with all applicable laws, any insurance policies and any warranties of the manufacturer with respect to the vehicles.

B. The City agrees to maintain, service, repair and insure said vehicles to the same extent as the City would, in the prudent management of its properties, for similar equipment owned or leased by the City and to the extent required to maintain the vehicles in good operating condition and in compliance with any applicable requirement of law or of any governmental authority having jurisdiction thereof.

C. The Authority will not permit any vehicles to be used or operated in violation of any law or any rule, regulation or order of any governmental authority having jurisdiction thereof. The Authority shall be responsible for the payment of all fines and penalties resulting from the Authority's use of the vehicles.

D. The Authority may return any vehicles to the City at its discretion at any time and shall return such vehicles at such location as the parties shall agree. Upon the expiration of the term of this Agreement or any prior termination of the Agreement for any reason, the Authority shall return any remaining vehicles to the City.

E. The Authority will reimburse the City for the costs of the services provided under the sublease in accordance with the terms of this Agreement.

VI. WATER EXONERATION HEARING BOARD:

A. The City shall maintain in existence the Water Exoneration Hearing Board with such changes to its composition as shall be recommended by the Authority and approved by City Council. After hearings, the Board shall recommend to the Authority the manner in which disputes as to rates or service shall be resolved, including recommendations as to exonerations, but the decision of the Board of the Authority shall be final in all such cases, subject to the right of appeal to the Court of Common Pleas under Local Agency Law.

VII. PAYMENTS BY THE AUTHORITY TO THE CITY:

A. The Authority shall reimburse the City for all City Expenses incurred by the City through December 31, 1994, inclusive, for the operation and maintenance of the System in accordance with the provisions of the Lease and Maintenance Agreement dated March 29, 1984.

B. The Authority shall reimburse the City for equalization payments made by the City to the Pennsylvania American Water Company or upon mutual agreement, make such payments directly to the Pennsylvania American Water Company.

C. Beginning January 1, 1995 and for each year thereafter, the City shall budget and pay expenditures required to provide the services under this Cooperation Agreement (including Actual Direct Expenses, Public Works Salaries and Wages and Overhead Expenses). The Authority shall pay the City monthly Actual Direct Expenses, Public Works Salaries and Wages and Overhead Expenses for such services where applicable.

D. In addition to other payments to the City provided for herein, the City shall be entitled to receive up to 600,000,000 gallons of water each year to be used by the City, its departments, agencies and instrumentalities (i.e., Pittsburgh Zoo, Phipps Conservatory, National Aviary in Pittsburgh and Schenley Golf Course) and as the City may be contractually obligated to provide as of the Effective Date hereof. The City shall not receive a credit for any water not so used. To the extent in excess of 600,000,000 is used, the Authority may offset that cost against moneys owed the City hereunder.

E. The Authority will reimburse the City for all worker's compensation benefits paid by the city on behalf of those employees in positions described in II B above. As to worker's compensation claims that may be filed subsequent to the date the positions are eliminated from the City budget, for injuries occurring prior to the date the positions are eliminated from the City budget the Authority will either directly pay the claim or reimburse the City for any benefits paid.

F. Neither the credit or taxing power of the City shall be pledged for payment of any Authority Indebtedness, and the City shall not be liable for any Authority debt payments.

G. The parties hereby agree that the Authority at its discretion may terminate any or all of services provided by the City. Such termination shall be effective upon a minimum of ninety (90) days written notice from the Authority to the City.

VIII. RATES:

A. The Authority shall establish rates pursuant to the covenants contained in the indenture securing the Authority's debt obligations, which shall be in an amount sufficient but no higher than necessary to meet the Authority's obligations thereunder together with the City's Overhead Expenses, all reasonable contingencies and to meet its obligations as they come due.

B. In conformity with Article III, Section Two of the By-laws of the Authority, the Authority shall hold a regular meeting of its Board each year to consider or establish rates. It is understood and agreed that the Authority may meet at any other times if the Authority determines that its existing rates will not produce sufficient revenues to meet its outstanding obligations and otherwise as needed pursuant to VIII A above.

IX. COOPERATION:

A. The City and the Authority shall cooperate with each other to the end that reasonable and adequate service shall be provided to customers of the system.

B. The City shall grant to the Authority all necessary easements and rights of way which may be required in addition to those heretofore leased by the City to the Authority.

C. The Authority shall not be required to pay for fees or charges for City permits or licenses.

X. INSURANCE AND INDEMNIFICATION:

A. The City shall and hereby does assume sole responsibility for all claims, including employee claims, demands, lawsuits, judgments against the City or the Authority arising from any work or service provided (i) in connection with the System on behalf of the Authority before the Effective Date of this Agreement and (ii) in connection with the Sewer System on or after the Effective Date.

B. The City may purchase excess limits insurance applicable to the Sewer System and, if it does so, it shall include the Authority as an additional insured; and the City shall be solely responsible for the payment of the premium.

C. The City shall and hereby does assume responsibility for all claims, demands, lawsuits, judgments against the City or the Authority arising from any work or service provided

to the Authority on or after the effective date of this Agreement; and the City does hereby indemnify, save harmless and agree to defend the Authority from and against all such claims, demands, lawsuits and judgments arising from any work or service provided to the Authority.

D. The City shall indemnify, save and hold harmless, and defend Authority, its officers, agents and employees from all liens, charges, claims, demands, losses, costs, judgments, liabilities and damages of every kind and nature whatsoever, including court costs and attorney's fees, arising by reason of City's intentional or negligent failure to perform any services under this Agreement; any act, error or omission of the City or any agent, employee, licensee, contractor or subcontractor of City, intentional or negligent, of any of the terms, conditions or provisions of this Agreement.

E. The City hereby indemnifies and saves harmless the Authority from any and all claims, including costs and reasonable attorney fees, based upon alleged improper expenditures made by the City in violation of Federal, State, or Local Law or if contrary to the provisions of any indenture or similar agreement securing Authority indebtedness.

XI. DEFICIENCIES IN PERFORMANCE:

If in the opinion of the Authority the City fails to operate and maintain the Sewer System in accordance with the standards prevailing prior to the lease of said system by the City to the Authority, the Authority shall so advise the City in writing, describing the specific deficiencies on which the opinion is based, and shall request the City to explain in writing said deficiency within thirty days of receipt of said notice. If the City fails to satisfy the Authority within said period, the Authority may direct the City in writing to correct such deficiency. The City shall thereupon take steps toward correction of said deficiency within sixty days after receipt by it of written notice by the Authority, or, if the City disagrees, it may exercise its rights to call for arbitration under Article XII hereof within said sixty day period. If the City shall fail to take steps to correct the deficiency within sixty days after receipt of the Authority notice or within sixty days after an adverse arbitration decision, whichever is later, then the Authority may itself cause the corrective work to be done. It is understood and agreed that all such corrective work shall be undertaken at the Authority's expense, and that the City assumes no liability for costs incurred to correct any of such deficiencies.

XII. SETTLEMENT OF DISPUTES:

In the event of any dispute between the Authority and the City with respect to the matters set forth in Paragraph XI of this Agreement, excepting, however, disputes arising out of renegotiation hereof, such disputes shall be settled by arbitration in accordance with the provisions of the Act of April 25, 1927 P.L. 381 as amended, of the Commonwealth of Pennsylvania. In any such case three arbitrators shall be appointed, one by the Authority, one by the City, and one by the two arbitrators so appointed by the Authority and the City. The

decision of a majority of the arbitrators shall be binding and conclusive upon the Authority and the City. In the event of the failure of the two arbitrators appointed by the Authority and the City to effect the appointment of a third arbitrator within two weeks after the appointment of the second, the third arbitrator shall be appointed by the trustee at that time under the trust indenture. The expense of such arbitration, exclusive of expenses of each party in its own behalf, shall be born equally by the parties.

III. AMENDMENTS:

This agreement may be amended in any respect by mutual written agreement of the parties.

IV. NOTICES:

All notices required under this Agreement shall be in writing and shall be mailed by certified mail or delivered as follows:

1. Notices to the Authority shall be sent to the Executive Director, the Pittsburgh Water and Sewer Authority, 441 Smithfield Street, Pittsburgh, Pennsylvania 15222.
2. Notices to the City shall be sent to Mayor, City of Pittsburgh, Pittsburgh, Pennsylvania 15219.

XV. ASSIGNMENT:

This Agreement shall not be assignable by either party without the written consent of the other.

XVI. TERM AND TERMINATION:

The term of this Agreement shall be forty (40) years commencing on the Effective Date. The City shall have the right to terminate this Agreement at any time upon ninety (90) days written notice to the Authority; provided, however, that any such termination shall be subject to the City providing for the payment in full of all existing liabilities, contingent and otherwise, of the Authority. The Authority shall have the right to terminate this Agreement at any time upon ninety (90) days written notice to the City.

The City understands that it may be required to enter into a supplemental agreement to extend the term of this Cooperation Agreement for such period as may be necessary to cover future financing by the Authority of Capital Additions.

EXHIBIT B

Positions to be Transferred
at a Later Date

	<u>Position</u>	<u>Current Employee</u>	<u>Union</u>
1.	Project Engineer, E&C	Bailey	Non-Union
2.	Engineer Tech. III, E&C	Waldorf	Non-Union
3.	Staff Engineer, E&C	Kasper	AFSCME
4.	Engineer II, E&C	vacant	AFSCME
5.	Engineer II, E&C	Eichelman	AFSCME
6.	Clerk Typist II, E&C	Schaub	AFSCME

Notwithstanding the foregoing provision for extension of the term of this Agreement to cover future financings, it is understood and agreed that, subject to appropriate amendment of the Article of Incorporation of the Authority extending its term of existence, this Cooperation Agreement shall be automatically renewed at the expiration of three (3) additional terms of five (5) years each, unless either party at least one year prior to the expiration of each renewal term shall request in writing a renegotiation for the subsequent term. If such renegotiations fail to produce a written agreement within the twelve month period, this Agreement shall continue for at least six (6) months after the end of the then current term.

XVI. GOVERNING LAW:

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

XVII. CONFLICT:

To the extent that any provision hereof conflicts with any provision of any Trust Indenture securing any indebtedness of the Authority, the provisions of the Trust Indenture shall prevail.

XIX. SEVERABILITY:

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement; and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein.

XX. MISCELLANEOUS:

This Agreement shall be effective as of January 1, 1995.

The City is authorized to enter into this Agreement pursuant to Resolution No. 12, approved January 24, 1995, effective January 24, 1995; and the Authority is authorized to do so pursuant to Resolution No. 47 of 1995 duly adopted at a special meeting of its board held on March 31, 1995.

IN WITNESS WHEREOF, This Agreement has been duly executed this 27th day of July, 1995.

ATTEST:

Lowan A. Winanda
Secretary Treasurer

ATTEST:

M. Linda Hengeman
Secretary to the Mayor

THE PITTSBURGH WATER AND SEWER
AUTHORITY

By [Signature]
Authorized Officer

CITY OF PITTSBURGH

By [Signature]
Mayor

Approved as to Form:

[Signature]
City Solicitor

Positions Transferred
as of Effective Date

	<u>Position</u>	<u>Current Employee</u>	<u>Union</u>
1.	Project Manager, E&C	Borneman	Non-Union
2.	Project Engineer, E&C	Jones	Non-Union
3.	Staff Engineer, E&C	Troianos	AFSCME
4.	Project Manager, Public Works	Lockard	Non-Union

CAPITAL LEASE AGREEMENT

THIS AGREEMENT, is made and entered into as of July 15, 1995, effective July 27, 1995 (the "Effective Date"), by and between the CITY OF PITTSBURGH (the "Lessor") having an office at City County Building, Pittsburgh, Pennsylvania 15219;

A
N
D

THE PITTSBURGH WATER AND SEWER AUTHORITY, having its principal office at 441 Smithfield Street, Pittsburgh, Pennsylvania 15222 (the "Lessee").

WITNESSETH:

WHEREAS, the Lessor desires to lease to Lessee and the Lessee desires to lease from Lessor, certain assets located in and around the City of Pittsburgh and used in connection with the operation of a water and sewer system by the Lessee under a Lease and Management Agreement dated March 29, 1984 (the "Lease and Management Agreement"), as more fully described herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto, intending to be legally bound hereby, do hereby agree as follows:

1. Termination of Existing Lease. Lessor and the Lessee hereby agree that on the Effective Date of this Lease, the Lease and Management Agreement shall terminate by mutual agreement of the Lessor and the Lessee and all obligations of either party thereunder shall cease.

2. Demise of Premises and Assignment of Contracts.

a. The Lessor hereby demises and lets to the Lessee, and the Lessee hereby takes and leases from the Lessor, for the term and upon the provisions hereinafter specified, the following described property (collectively the "Leased Property"): (i) the entire network of water and sewage transmission pipelines as detailed on the Lessee's engineering maps, all water storage facilities (collectively the "System") and certain land and buildings (the "Real Property"), both the System and the Real Property are more fully described on Exhibit A hereto, (ii) all fixtures relating to the Real Property, (iii) all equipment used in connection with or related to the operation of the System (the "Equipment"), (iv) all water and sewage transmission pipelines dedicated by builders or developers subsequent to the Effective Date and all assets associated with or used in connection with such pipelines, (v) all spare parts wherever

located and used in connection with the operation of the Equipment, and (vi) all inventory used in connection with the operation of the Equipment; provided, however, that the Leased Property shall not include the assets set forth on Exhibit B hereto.

b. Lessor hereby assigns to Lessee and Lessee hereby assumes all contracts, leases, permits, licenses and other instruments (collectively, the "Contracts") used in connection with the operation of the System, including but not limited to those listed on Exhibit A hereto. Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any contract or any right or benefit arising thereunder or resulting therefrom if an attempted transfer or assignment thereof, without the consent of a third party thereto, would constitute a breach thereof or in any way affect the rights of Lessor or Lessee thereunder. If such consent is not obtained, or if an attempted transfer or assignment thereof would be ineffective or would affect the rights of Lessor thereunder so that Lessee would not in fact receive all such rights, Lessor shall cooperate with Lessee in any arrangement designed to provide for Lessee the benefits under any such contracts, or any claim or right or any benefit arising thereunder or resulting therefrom, including, without limitation, enforcement for the benefit of Lessee of any and all rights of Lessor against a third party thereto arising out of the breach or cancellation by such third party or otherwise.

c. Other than liabilities arising out of operation of the Leased Premises or the Contracts subsequent to the Effective Date, Lessee does not, pursuant to this Lease, assume any liabilities or obligations of Lessor.

3. Term.

(a) Subject to the provisions hereof, the Lessee shall have and hold the Leased Property for a term commencing as of July 15, 1995 and ending on September 1, 2025 at 12:00 midnight (the "Term").

(b) At the expiration of the Term the Lessee shall have the option to acquire all of the Leased Property from the Lessor in consideration of the payment of one dollar (\$1.00) in immediately available funds by the Lessee to the Lessor.

4. Rent. The Lessee shall pay to the Lessor as rent for the Term the total sum of One Hundred One Million Four Hundred Sixteen Thousand Nine Hundred Seventy-Four Dollars and Sixty Cents (\$101,416,974.60) as follows:

(a) The Lessee on the scheduled payment dates shall pay to the Lessor in immediately-available funds the following amounts (the "Capital Lease Payments"):

<u>Payment Date</u>	<u>Payment Amount</u>
July 27, 1995	\$35,000,000
January 2, 1996	\$20,000,000

August 1, 1996	\$20,000,000
January 2, 1997	\$21,017,249.60

(b) The Lessee shall receive a credit of Five Million Three Hundred Ninety-Nine Thousand Seven Hundred Twenty-Five Dollars (\$5,399,725) based on prepayments calculated under generally accepted accounting principles at December 31, 1994 and made under the Lease and Management Agreement prior to the Effective Date (the "Credit").

The Capital Lease Payments and the Credit are collectively referred to herein as the "Rent."

5. Bond Contingency. It is expressly agreed by the Lessor that the obligations of the Lessee hereunder are contingent on the Lessee's successful issuance of the Lessee's \$103,020,000 aggregate principal amount Water and Sewer System Subordinate Revenue Bonds, Series B of 1995 (the "Bonds") to finance this Lease. If for any reason the Lessee is unable to issue the Bonds, the Lease and Management Agreement shall remain in full force and effect unmodified by this Lease.

From and after the issuance of the Bonds, the Lessor shall not take any actions that will adversely affect the tax exempt status of the Bonds.

6. Use of Leased Premises; Quiet Enjoyment.

(a) The Lessee may occupy and use the Leased Property in order to provide water and sewer services and services incidental thereto to customers in and around the City of Pittsburgh and other purposes consistent with the public purposes of the Lessee. Lessee shall not use or occupy or permit any Leased Property to be used or occupied, nor do or permit anything to be done in or on any of the Leased Property, in a manner which would materially violate any law or legal requirement.

(b) Subject to the provisions hereof, so long as no Event of Default has occurred and is continuing, Lessor covenants to do no act to disturb the peaceful and quiet occupation and enjoyment of the Leased Property by Lessee, provided that Lessor may enter upon and examine any of the Property at such reasonable times as Lessor and Lessee based upon their mutual convenience may select for the purpose of inspecting the Leased Property, verifying compliance or non-compliance by Lessee with its obligations hereunder and the existence or non-existence of any Event of Default or event which with the passage of time and/or notice would constitute an Event of Default.

(c) During the term of this Lease, Lessor covenants not to assign, sell, convey or transfer any right, title or interest in or to the Leased Property or create, incur, assume or suffer to exist, directly or indirectly, any lien, encumbrance or security interest of any kind on the Leased Property, other than the encumbrances set forth on Exhibit D hereto or other encumbrances existing as of the Effective Date that do not materially detract from the value or

interfere with the present use of any of the Leased Property or otherwise materially impair its intended use.

7. Representations and Warranties of the Lessor. The Lessor hereby represents and warrants to the Lessee the following:

(a) Organization; Power; Good Standing. The Lessor has all requisite power and authority to own, operate and lease its properties, to carry on its business as now being conducted and to enter into this Lease and perform its obligations hereunder.

(b) Authority Relative to Lease. The execution, delivery and performance of this Lease by the Lessor will have been duly and effectively authorized by all necessary action by the Lessor. This Lease has been duly executed by the Lessor and is a valid, legally binding and enforceable obligation of the Lessor.

(c) Effect of Lease. The execution, delivery and performance of this Lease by the Lessor and the consummation of the transactions contemplated hereby will not (i) require the consent, approval or authorization of any person, corporation, partnership, joint venture or other business association or public authority (other than the City Council of the Lessor); (ii) violate, with or without the giving of notice or the passage of time, or both, any provisions of law or statute or any rule, regulation, order, award, judgment or decree of any court or governmental authority applicable to the Lessor; or (iii) conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any of the Leased Property pursuant to any charter, bylaw, indenture, mortgage, lease, contract, agreement or other instrument, or any order, judgment, award, decree, statute, ordinance, regulation or any other restriction of any kind or character, to which the Lessor is a party, or by which the Lessor or any of the Leased Property may be bound.

(d) Absence of Certain Changes or Events. Except as otherwise disclosed in Exhibit C hereto, with regard to the Leased Property and the Contracts, the Lessor has not:

(i) mortgaged, pledged or subjected to any lien, charge, security interest or to any other encumbrance any of the Leased Property or the Contracts (whether tangible or intangible); and

(ii) suffered any material casualty loss or damage to the Leased Property, whether or not such loss or damage shall have been covered by insurance.

(e) Title to Properties; Absence of Liens and Encumbrances; Leases.

(i) The Lessor has good and marketable title to all of the Real Property and good title to all of the Leased Property, tangible and intangible, free and clear of

all claims and encumbrances (including all property reflected in Exhibit A hereto), other than (i) as specifically disclosed in Exhibit D hereto, and (ii) such imperfections of title, easements, liens, pledges, charges and encumbrances, if any, as do not materially detract from the value or interfere with the present use of any of the Leased Property or otherwise materially impair its intended use;

(ii) All leases and easements pursuant to which the Lessor, leases or uses any real or personal property included in the Leased Property are valid and binding against the Lessor, in accordance with their terms and there is not under any of such leases or easements any existing default by the Lessor, event of default by the Lessor, or event which with notice or lapse of time, or both, would constitute a default by the Lessor (and in respect of which the Lessor has not taken adequate steps to prevent such a default or event of default from occurring). Except as set forth on Exhibit D hereto, none of the rights of the Lessor under any of such leases or easements is subject to termination or modification as the result of the transactions contemplated hereby.

(f) Contracts. To the knowledge of Lessor, all of the Contracts are valid and enforceable in accordance with their terms against Lessor and against the other parties to such Contracts in all material respects.

(g) List of Properties, Contracts and Other Data. Exhibit A hereto is a list setting forth the Leased Property and the Contracts.

(h) Litigation. Except as disclosed in Exhibit E hereto, there are no claims, actions, suits, proceedings or investigations pending or, to the Lessor's knowledge, threatened against or affecting the Leased Property or the Contracts at law or in equity or in admiralty, or before or by any federal, state, municipal or governmental or nongovernmental department, commission, board, bureau, agency or instrumentality, United States or foreign which would have a material adverse effect on the Leased Property or the Contracts.

(i) Licenses; Permits; Authorization. Exhibit F hereto is a description of all approvals, authorizations, consents, licenses, orders and permits of all governmental agencies, whether United States, state or local, issued to or in favor of the Lessor with respect to the operation of the Leased Property.

(j) Environmental Matters.

(i) In connection with the Leased Property, there are no unresolved notices of violation, orders, claims, citations, complaints, penalty assessments, suits or other proceedings, administrative, civil, criminal, at law or in equity, pending against the Lessor and, to the knowledge of the Lessor, no investigation or review is pending or threatened against the Lessor by any governmental entity or third party with respect to any alleged violation of any federal, state or local environmental law, regulation, ordinance, standard, permit or order in connection with the conduct of the System.

(ii) In connection with the operation of the Leased Property to the Lessor's knowledge, the Lessor is not in violation of any environmental law.

(iii) Since 1987, except as reported on The Superfund Amendments and Reauthorization Act of 1986, Title III, Section 313, Toxic Release Inventory Reporting Form Rs ("Toxic Substance Release Reports"), to the Lessor's knowledge, no hazardous, toxic or polluting substances have been released, discharged or disposed of at or from property now or formerly owned or operated by the Lessor and part of the Leased Property.

(iv) Except as listed on Exhibit G hereto, to the Lessor's knowledge, there are no outstanding public notices regarding noncompliance with applicable state and federal Safe Drinking Water Act rules and regulations, no temporary emergency actions, no public notices regarding lead, nor any variances or exemptions from MCL's or treatment techniques.

(v) Notwithstanding anything herein to the contrary, Lessor shall notify Lessee of any violation, orders, claims, citations, complaints, penalty assessments, suits or other proceedings, administrative, civil, criminal, at law or in equity, Lessor receives in connection with the Leased Property.

8. Representations and Warranties of the Lessee. The Lessee represents and warrants to the Lessor as follows:

(a) Organization; Good Standing; Power. On the Closing Date the Lessee will be a municipal authority duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and will have all requisite power and authority to own, lease and operate its properties and the Leased Property to carry on its business as now being conducted and the business conducted in connection with the Leased Property and to enter into this Lease and perform its obligations.

(b) Authority Relative to Lease. On the Closing Date, the execution, delivery and performance of this Lease and the transactions contemplated hereby and thereby by the Lessee will have been duly and effectively authorized and ratified by all necessary action by the Lessee. This Lease has been duly executed by Lessee and is a valid, legally binding and enforceable obligation of Lessee.

(c) Effect of Lease. The execution, delivery and performance of this Lease and the consummation of the transactions contemplated hereby will not (i) require the consent, approval or authorization of any person, corporation, partnership, joint venture or other business association or other public authority (other than the Board of the Lessee); (ii) violate, with or without the giving of notice or the passage of time, or both, any provisions of law or statute or any rule, regulation, order, award, judgment or decree of any court or governmental authority applicable to the Lessee; or (iii) conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any of the properties or assets of the Lessee pursuant to any indenture,

corporate charter, bylaw, mortgage, deed of trust, lease, contract, agreement or other instrument or any order, judgement, award, decree, statute, ordinance, regulation or any other restriction of any kind or character, to which the Lessee is a party, or by which the Lessee or any of its assets or properties may be bound.

(d) Litigation. Except as described on Exhibit H hereto, there are no claims, actions, suits, proceedings or investigations pending against the Lessee, or to the best of Lessee's knowledge, threatened, that would have a material adverse effect on the transaction contemplated hereby.

9. Transactions prior to the Effective Date.

(a) Permits. From and after the date hereof, the Lessor shall, upon the Lessee's reasonable request, provide reasonable assistance to the Lessee in obtaining transfer of any environmental or operating permits and licenses issued or held by the Lessor and necessary for the Lessee to conduct its operations with the Leased Property.

(b) Consents. The Lessor agrees that it shall obtain prior to the Effective Date all material consents, assignments, and approvals as may be required in order to enable it to perform its obligations hereunder, including, but not limited to, all material consents and approvals required to permit it to make the transfers to the Lessee contemplated herein so that the Lessee may enjoy after the Effective Date all rights and benefits presently enjoyed by the Lessor with respect to the Leased Property.

10. Additional Condition Precedent. The obligations of Lessee under this Lease are subject to the satisfaction at or prior to the Effective Date that all consents required to assign the Contracts to Lessee shall have been obtained.

11. Compliance with Laws. The Lessee shall, at its expense, materially comply with and conform to all legal requirements placed on the Leased Property during the Term, including all applicable environmental laws; unless the Lessee is contesting the requirement in good faith by appropriate legal proceedings promptly initiated and diligently prosecuted.

12. Maintenance and Repair. The Lessee shall at all times maintain the Leased Property in as good condition as it is in on the date hereof, ordinary wear and tear excepted. The Lessee shall take every other action necessary or appropriate for the preservation and safety of the Leased Property. The Lessee shall promptly make all alterations of every kind and nature, whether foreseen or unforeseen, which may be required to comply with the foregoing requirements of this Paragraph 12 or any authority having jurisdiction over the Lessee or the Leased Property.

13. Indemnification of the Lessor. Subject to the terms of the Cooperation Agreement dated June 15, 1995 between the Lessor and the Lessee, pursuant to which the Lessor has agreed to provide certain services to the Lessee in connection with the operation of the Leased Property (the "Cooperation Agreement"), the Lessee agrees to indemnify and hold the Lessor harmless against and in respect of:

(a) all obligations and liabilities of the Lessee relating to the Leased Premises, whether accrued, absolute, fixed, contingent or otherwise, occurring after the Effective Date of this Lease;

(b) any loss, liability or damage suffered or incurred by the Lessor because of a breach of any obligation of the Lessee incurred under this Lease, or because any representation or warranty by the Lessee contained herein shall be false as of the Effective Date;

(c) all reasonable costs and expenses (including attorney's fees) incurred by the Lessor in connection with any action, suit, proceeding, demand, assessment or judgment for which the Lessor is entitled to indemnification under this Paragraph 13.

14. Indemnification of the Lessee. Subject to the terms of the Cooperation Agreement, the Lessor agrees to indemnify and hold the Lessee harmless against and in respect of:

(a) all obligations and liabilities of the Lessor relating to the Leased Premises, whether accrued, absolute, fixed, contingent or otherwise, occurring before the Effective Date of this Lease;

(b) any loss, liability or damage suffered or incurred by the Lessee because of a breach of any obligation of the Lessor incurred under this Lease, or because any representation or warranty by the Lessor contained herein shall be false as of the Effective Date;

(c) all reasonable costs and expenses (including attorney's fees) incurred by the Lessee in connection with any action, suit, proceeding, demand, assessment or judgment for which the Lessee is entitled to indemnification under this Paragraph 14.

15. Insurance. (a) The Lessee shall maintain the following insurance on or in connection with the Leased Property:

(i) Insurance against loss or damage to the Real Property and the System by fire and other risks from time to time included under standard extended and additional extended coverage policies, including vandalism and malicious mischief, sprinkler, and, to the extent any of the Leased Property is in a flood zone, flood insurance in amounts not less than the actual replacement value of the Real Property and the System, excluding footings and foundations and other parts of the Real Property which are not insurable (or, in the case of plate

glass insurance, the replacement cost of all plate glass in the Leased Property). Such policies shall contain replacement cost endorsements.

(ii) General public liability insurance against claims for bodily injury, death or property damage occurring on, in or about any of the Leased Property, in an amount not less than \$1,000,000 for bodily injury or death to any one person, not less than \$1,000,000 for bodily injury or death in any one accident, and not less than \$2,000,000 for property damage.

(iii) Worker's compensation insurance covering all persons employed by the Lessee in connection with any work done on or about any of the Leased Property for which claims for death or bodily injury could be asserted against the Lessor, the Lessee or any of the Leased Property or, in lieu of such worker's compensation insurance, a program of self-insurance complying with the rules, regulations and requirements of the appropriate agency of the Commonwealth of Pennsylvania.

(iv) Such other insurance on or in connection with any of the Leased Property as the Lessor may reasonably require, which at the time is commonly obtained in connection with properties similar to the Leased Property.

16. Casualty. If any casualty occurs, the Lessee shall give the Lessor immediate notice thereof. The Lessee is hereby authorized to adjust, collect and compromise, in its discretion and upon notice to the Lessor, all claims under any of the insurance policies required by Paragraph 15 and to execute and deliver on behalf of the Lessor all necessary proofs of loss, receipts, vouchers and releases.

17. Events of Default and Remedies.

(a) If any one or more of the following events (an "Event of Default") shall happen:

(i) Failure by the Lessee to make due and punctual payments of all or any portion of the Rent as and when the same shall be due and payable as provided in other provisions of this Lease and such failure shall continue for ten (10) days after receipt of notice thereof from the Lessor to the Lessee; or

(ii) Failure by the Lessee to materially perform and comply with any of the other agreements, terms, covenants, or conditions of this Lease within a period of thirty (30) days after notice from the Lessor to the Lessee specifying that such items are in default; provided that, if such failure is not susceptible of being cured with due diligence within such thirty (30) day period, the time allowed the Lessee to cure such failure shall be extended for such period as may be reasonably necessary so long as the Lessee promptly makes all efforts to complete such cure with all due diligence; provided, further, that if such failure shall subject the Leased Property to any risk of seizure, foreclosure, forfeiture or shall subject the Lessor to

any risk of default under any other leases, mortgages or agreements of which the Lessee has been given notice or of criminal prosecution, the time allowed hereunder for curing such failure shall immediately and without further notice cease notwithstanding anything to the contrary contained in this Lease; or

(iii) The Lessee shall make a general assignment for the benefit of creditors; or

(iv) The Lessee shall file any voluntary petition in bankruptcy or an involuntary petition shall be filed by the creditors of the Lessee, which involuntary petition shall remain undischarged for a period of ninety (90) days; or

(v) A receiver shall be employed or appointed to take possession of substantially all of the assets of the Lessee, which receivership shall remain undissolved for a period of ninety (90) business days after creation thereof; or

(vi) The Lessee shall admit in writing its inability to pay its debts as they become due, or the Lessee shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or the Lessee shall file an answer admitting or failing timely to contest a material allegation of a petition filed against the Lessee in any such proceeding or, within sixty (60) days after the commencement of any proceeding against the Lessee seeking any reorganization, or arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statutes, law or regulation, such proceeding shall not have been dismissed;

then in any such event, the Lessor shall have all rights or remedies available to the Lessor at law or in equity, including specific performance.

(b) No failure by the Lessor to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach of such agreement, term, covenant or condition. No waiver of any breach shall affect or alter this Paragraph but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

(c) Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Lessor of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Lessor of any or all other rights or

remedies provided for in this Lease or now or hereafter existing in law, in equity, under any statute or otherwise.

18. Miscellaneous.

(a) Survival of Representations. All representations, warranties and agreements made by the Lessor and the Lessee in this Lease or in any exhibit, certificate, document or instrument delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby, and the remedies of the Lessee and the Lessor with respect thereto, shall survive the termination of this Lease for a period of five (5) years.

(b) Waivers and Amendment.

(i) The Lessor or the Lessee may, by written notice to the other may, (i) extend the time for the performance of any of the obligations or other actions of the other; (ii) waive any inaccuracies in the representations or warranties of the other contained in this Lease; (iii) waive compliance with any of the covenants of the other contained in this Lease; and (iv) waive or modify performance of any of the obligations of the other.

(ii) This Lease may be amended, modified or supplemented only by a written instrument executed by all the parties hereto. Except as provided in the preceding sentence, no action taken pursuant to this Lease, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained herein. The waiver by any party hereto of a breach of any provision of this Lease shall not operate or be construed as a waiver of any subsequent breach.

(c) Expenses. Whether or not the transactions contemplated by this Lease are consummated, the Lessee shall be responsible for the fees and expenses of its counsel, accountants, other experts and all other expenses incurred by it incident to the negotiation, preparation and execution of this Lease, and the Lessor shall be responsible for any and all such fees and expenses incurred by it incident to the negotiation, preparation and execution of this Lease and the performance by it of its obligations hereunder.

(d) Occurrences of Conditions Precedent. Each of the parties hereto agrees to use its best efforts to cause all conditions precedent to its obligations under this Lease to be satisfied.

(e) Notices. All notices, requests, demands and other communications which are required or may be given under this Lease shall be in writing and shall be deemed to have been duly given if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid:

(a) If to the Lessor to:
City of Pittsburgh
City County Building

Pittsburgh, PA 15219
Attention: City Solicitor

- (b) If to the Lessee to:
The Pittsburgh Water and Sewer Authority
441 Smithfield Street
Pittsburgh, PA 15222
Attention: Executive Director

or to such other address as any party shall have specified by notice in writing to the other.

(f) Entire Agreement. This Lease and the Exhibits hereto constitute the entire agreement between the Lessee and the Lessor with respect to the subject matter hereof.

(g) Binding Effect; Benefits. This Lease shall inure to the benefit of and be binding upon the parties hereto and their successors; nothing in this Lease, expressed or implied, is intended to confer on any other person other than the parties hereto, or their successors, any rights, remedies, obligations or liabilities under or by reason of this Lease.

(h) Non-assignability. This Lease and any rights pursuant hereto shall not be assignable by either party without the prior written consent of the other and any assignment in violation hereof shall be null and void and of no force and effect.

(i) Applicable Law. This Lease and the legal relations between the parties hereto shall be governed by and in accordance with the laws of the Commonwealth of Pennsylvania.

(j) Section and Other Headings. The section and other headings contained in this Lease are for reference purposes only and shall not affect the meaning or interpretation of this Lease.

(k) Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

(l) Recordation. Lessor and Lessee agree to execute contemporaneously herewith a Memorandum of Lease for recordation in the Office of the Recorder of Deeds of Allegheny County, Pennsylvania, in lieu of this Lease.

(m) Further Assurances. The parties hereto each agree to execute, make, acknowledge and deliver such instruments, agreements, assignments, other instruments of title and conveyances and other assurances and documents as may be required to effectuate the purposes of this Capital Lease Agreement and to consummate the transactions contemplated hereby.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed and delivered this Lease as of the date first above written.

ATTEST:

Koran A. Nunn
Secretary
Treasurer

THE PITTSBURGH WATER AND
SEWER AUTHORITY

By: *Joseph P. Patton Jr.*
Chairman

ATTEST:

M. Linda Langewere
Secretary to the Mayor

CITY OF PITTSBURGH

By: *F. M. G.*
Mayor

Approved as to Form:

Suzanne Moraw
City Solicitor

Countersigned:

By: *Tom Roberts*
City Controller

Approved as to form:
D. M. McCormey & Chilcote, P.C.,
Solicitor to the Controller
City of Pittsburgh

Thomas J. Roberts

EXHIBITS

- A. Leased Property and Contracts.
- B. Excluded Assets
- C. Description of certain recent changes or events affecting the Lessor.
- D. Description of liens, security interests and encumbrances on property.
- E. Description of litigation involving the Leased Property.
- F. List of approvals, authorizations, consents, licenses and permits required in connection with the operation of the business.
- G. Environmental Matters.
- H. Description of litigation against the Lessee.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017951 (water)
	:		C-2020-3019348
v.	:		C-2020-3019305
	:		
Pittsburgh Water and Sewer Authority - Water	:		
	:		
Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017970 (wastewater)
	:		C-2020-3019349
v.	:		C-2020-3019302
	:		
Pittsburgh Water and Sewer Authority - Wastewater	:		
	:		
Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to Authorize the Pay-As-You-Go Method of Financing	:	Docket Nos.	P-2020-3019019
	:		
	:		
	:		
	:		
	:		

**DIRECT TESTIMONY OF
HOWARD J. WOODS, JR., P.E.**

**ON BEHALF OF
THE CITY OF PITTSBURGH**

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1. STATEMENT OF QUALIFICATIONS

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is Howard J. Woods, Jr. and my address is 49 Overhill Road, East Brunswick, New Jersey 08816-4211.

Q. BY WHOM ARE YOU EMPLOYED?

A. I am an independent consultant and the City of Pittsburgh ("City") has engaged me in this matter.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL QUALIFICATIONS.

A. I hold a Bachelor of Civil Engineering from Villanova University (1977) and a Master of Civil Engineering with a concentration in water resources engineering also from Villanova University (1985). I am a registered professional engineer in New Jersey, New York, Maryland, Pennsylvania, Delaware, and New Mexico. I am also licensed to perform RAM-WSM security assessments of public water systems. I am an active member of the American Society of Civil Engineers, the National Ground Water Association, the American Water Works Association, the Water Environment Federation, and the International Water Association.

Q. HAVE YOU PROVIDED TESTIMONY IN UTILITY MATTERS ON PRIOR OCCASIONS?

1 A. Yes. I have testified in numerous rate setting proceedings and quality of service evaluations
2 in matters before the Public Utility Commissions in New Jersey, New York, Connecticut,
3 Delaware, Pennsylvania, and Kentucky. The focus of my testimonies is on matters involving
4 revenue requirement, utility operations, system acquisitions, planning, and engineering.
5

6 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

7 A. A detailed description of my professional experience is provided in Appendix A of this
8 Testimony. In summary, I have over 43 years' experience in the planning, design,
9 construction, and operation of water and wastewater utility systems. I have worked for a
10 Federal regulatory agency, a large investor-owned water and wastewater utility, a firm
11 engaged in contract operations of municipally owned water and wastewater utilities, and
12 in engineering and operational consulting for the water and wastewater industry. During
13 my career, I have been responsible for all operations functions including regulatory
14 compliance, water production, distribution, and maintenance services as well as wastewater
15 collection and treatment. I have evaluated numerous water and wastewater acquisitions, and
16 I have advised clients on the sale or acquisition of these systems.
17

18 **2. SCOPE AND PURPOSE OF TESTIMONY**

19 **Q. MR. WOODS, PLEASE DESCRIBE YOUR AREA OF RESPONSIBILITY IN THIS**
20 **MATTER.**

21 A. The City engaged me to review the Cooperation Agreement Between the City of Pittsburgh
22 and the Pittsburgh Water and Sewer Authority dated October 3, 2019 (the "2019

1 Agreement”) and offer an opinion regarding the equity of the cost sharing strategies
2 embodied in the 2019 Agreement.

3

4 **Q. WHAT MATERIALS HAVE YOU REVIEWED IN DISCHARGING THIS**
5 **ASSIGNMENT?**

6 A. I have reviewed the Capital Lease Agreement dated July 15, 1995, the Cooperation
7 Agreement dated June 15, 1995, and the 2019 Agreement. I have also reviewed the audits
8 for the City titled City of Pittsburgh, Pennsylvania, Comprehensive Annual Financial Report,
9 Year Ended December 31, 1995 and the City of Pittsburgh, Pennsylvania, Comprehensive
10 Annual Financial Report, Year Ended December 31, 2019. In addition, I reviewed the Direct
11 Testimony of Ms. Debbie M. Lestitian, which is marked as PWSA St. No. 1 in this matter
12 and the Supplemental Testimony of Mr. Harold J. Smith, which is marked as PWSA St. No.
13 7-SD in Docket Nos. R-2020-3017951 and R-2020-3017970. I have also reviewed the
14 testimonial statement of Mr. Daniel Gilman on behalf of the City. Finally, I also reviewed
15 the Commission's Order in Docket Nos. M-2018-2640802 and M-2018-2640803 and the
16 Commonwealth Court Decision in Lloyd v. Pennsylvania Public Utility Commission.

17

18 **Q. ARE YOU SPONSORING ANY EXHIBITS?**

19 A. No.

20

1 referenced by City witness Daniel Gilman, would retroactively frustrate the total overall
2 deal negotiated by two sophisticated parties. For example, as Mr. Gilman noted, if you
3 strip away the City's rights to water from a Cooperation Agreement, then the Lease amount
4 would have been higher to offset what the City would be required to pay. My point is it
5 would be unfair and inadvisable to ignore that the two negotiated documents are
6 intertwined and interdependent to effectuate a negotiated transition, or in fact, an
7 acquisition of the systems by PWSA.

8 Under the terms of the 1995 Cooperation Agreement, City Water Department employees
9 became employees of the PWSA. As a result, the PWSA assumed various obligations from
10 the City. The City and the PWSA provided various services to each other in accordance
11 with the Cooperation Agreement, and the PWSA reimbursed the City for direct and indirect
12 costs attributed by the City to the operation and maintenance of the System.

13 Also, under the terms of the 1995 Cooperation Agreement, PWSA provided up to 600
14 million gallons of water annually for the City's use without charge. This volume of water
15 was available to the City for its use at facilities like the City public swimming pools and
16 the uses of its instrumentalities, such as the Pittsburgh Zoo. Also, the PWSA assumed the
17 City's obligation for the cost of subsidizing water service to those residents of the City
18 situated beyond PWSA's service area and served by Pennsylvania American Water
19 Company, so that those water users pay charges that mirror the rates of PWSA.

20 The City has retained the pension obligation for PWSA's employees who participate in the
21 City's Municipal Pension Plan. The extent of PWSA's participation in such obligation with
22 respect to these employees whose membership continued upon becoming employees of

1 PWSA is determined by the shared interpretation of the City and the PWSA of the intent
2 of the Cooperation Agreement.

3 The 1995 Cooperation Agreement obligated PWSA to set rates at levels sufficient to
4 recover the cost of operations and maintenance of the System and to recover the debt
5 service obligations of PWSA. The credit and taxing power of the City was not to be used
6 to satisfy any Authority indebtedness and the City was no longer responsible for any
7 Authority debt payments. While the City owns the assets, it continues to bear legal and
8 business risk for any claims and lawsuits brought against the City or Authority relative to
9 the systems, service to other customers, and assets. This situation will continue up and
10 through 2025 when the ownership would change to PWSA. In a real sense, the City is
11 distinguishable as a customer or user of PWSA and bears financial exposure and risk that
12 no other customer has to bear. Given this, the City is unique, and this is one of many
13 reasons for treating the City different than other customers because it is different.

14 The term of the 1995 Cooperation Agreement was 40 years from the effective date, which
15 was January 1, 1995. Both parties had a right to terminate the agreement with 90 days'
16 notice to the other.

17 On February 4, 2019, PWSA's Board issued a resolution that the existing Cooperation
18 Agreement shall be terminated in accordance with the terms of the agreement, 90 days after
19 the approval of the resolution. City and PWSA officials have collaborated on and
20 negotiated a new Agreement, the 2019 Agreement, which has been filed with the
21 Commission for review in this proceeding.

1 The 1995 Capital Lease Agreement (the "1995 Lease") remains in effect. The 1995 Lease
2 commenced on July 15, 1995 and has a term of 30 years. The 1995 Lease terminated the
3 prior 1984 Lease and Management Agreement. The 1995 Lease established a series of
4 System rental payments due from the PWSA to the City totaling \$101,416,974.60. This
5 sum included \$5,399,725 in prepayments plus payments of \$35,000,000 to be made by July
6 25, 1995, two payments of \$20,000,000 each to be made on January 2, 1996 and August 1,
7 1996, and a final payment of \$21,017,249.60 due on January 2, 1997. It is my
8 understanding that these payments have been made. The lease terminates on September 1,
9 2025, and on that date, PWSA has the option to acquire the System for the additional
10 payment of one dollar (\$1.00).

11 The 1995 Lease and the 1995 Cooperation Agreement comprise the terms and conditions
12 whereby the PWSA would acquire the System from the City. It is my opinion that the two
13 agreements, taken together, are the result of careful negotiations between two sophisticated
14 parties that carefully balance costs and expenses borne by each party and ultimately the
15 City taxpayers and all PWSA rate payers.

16

17 **Q. IS IT YOUR UNDERSTANDING THAT THE CITY IS THE OWNER OF THE**
18 **SYSTEM ASSETS COMPRISING THE PWSA?**

19 A. Yes, I believe that is correct. The City financial audits recognize that the City appoints the
20 Board of PWSA, and the City includes PWSA as a component unit in its financial
21 statements.

22

23 **Q. WHAT IS THE COMPOSITION OF THE PWSA BOARD?**

1 A. The PWSA Board has a maximum of seven members, consisting of one City Council
2 member, the City Treasurer, the City Finance Director, and four members chosen by the
3 Mayor. Currently, there are six sitting Board members. Board members have a
4 responsibility to act in the interests of the PWSA.

5
6 **Q. AS A COMPONENT UNIT, HOW ARE THE ASSETS OF THE PWSA**
7 **REFLECTED IN THE CITY'S FINANCIAL STATEMENTS?**

8 A. The financial statements separately identify component units like PWSA. PWSA is
9 reflected on the Combining Statement of Net Position with \$998,895,000 in utility assets,
10 \$12,181,000 in non-utility assets, and \$135,287,000 in construction work in progress.
11 Accumulated depreciation amounts to \$315,785,000. Thus, the net capital asset value is
12 \$830,578,000.¹

13
14 **Q. HOW HAS THE NET CAPITAL ASSET VALUE CHANGED SINCE 1995 WHEN**
15 **THE 1995 LEASE WAS EXECUTED?**

16 A. At the start of 1995, the net capital asset value of PWSA was \$172,456,000.² Given that
17 annual depreciation of these assets was recorded at \$4,206,000, the current depreciated
18 value of the 1995 assets can be estimated at \$67,306,000, and at the term of the 1995 Lease,
19 this value will be further reduced to \$46,276,000. The current net capital asset value
20 reflected on the City's component unit balance sheet shows the significant investments
21 made by PWSA since 1995. However, it is apparent that the PWSA has benefited from

¹ City of Pittsburgh Pennsylvania, Comprehensive Annual Financial Report for the Fiscal Year Ended December 31, 2019; Fund Financial Statements; p. 18.

² City of Pittsburgh Pennsylvania, Comprehensive Annual Financial Report for the Fiscal Year Ended December 31, 1995; p. 139.

1 the 1995 Lease simply because it was able to acquire the use of \$172,456,000 in net utility
2 assets at a bargain price of \$101,416,975.

3

4 **Q. IS THE RELATIONSHIP BETWEEN THE CITY AND PWSA TYPICAL OF**
5 **OTHER MUNICIPAL UTILITIES AUTHORITIES?**

6 A. Yes. The City is the owner of the assets and it appoints the governing body of its Authority.
7 In addition, both the PWSA and the City take advantage of certain shared services and
8 functions to the mutual benefit of taxpayers and ratepayers. In other circumstances, it is
9 common to find that the Authority and creating municipality share services and expenses
10 for things like insurance, fleet maintenance, energy purchasing, pension and benefit
11 programs, and other support services. It is also common to see arrangements where the
12 utility authority does not isolate public fire protection as a cost center. In such cases, public
13 fire hydrant charges are not billed to the creating municipality. Similarly, water use at
14 municipal facilities is often an authorized but unbilled use.

15

16 **Q. HAS THE COMMISSION PROVIDED ANY GUIDANCE TO THE CITY**
17 **REGARDING THE RELATIONSHIP THAT SHOULD EXIST BETWEEN THE**
18 **CITY AND PWSA GOING FORWARD?**

19 A. Yes. While I am advised by counsel that there may be legal defects in the Commission's
20 Opinion and Order in Dockets M-2018-2640802 and M-2018-2640803, the Commission
21 noted that the Parties agreed that the following principles should be incorporated in the
22 new Cooperation Agreement: (a) any payments to the City must be just, reasonable, and
23 substantiated; (b) the City and the PWSA's relationship should be conducted on an arm's

1 length "business-like" basis; and (c) services provided by the City to the PWSA, and vice
2 versa, should be identified with detailed breakdown and be charged based on the related
3 cost of service.³

4
5 **Q. DID THE COMMISSION ADDRESS ANY OTHER AREAS REGARDING THE**
6 **RELATIONSHIP BETWEEN THE CITY AND PWSA?**

7 A. Yes, in Dockets M-2018-2640802 and M-2018-2640803, the Commission also addressed
8 the existence of unmetered City accounts and properties, and directed PWSA to include
9 the cost of meter installation in its capital improvement programs and to consider and
10 propose the implementation of a municipal customer class with both flat and metered rates.
11 This would allow PWSA to begin billing the City for service at least on a flat rate basis
12 pending the installation of meters at these locations.

13
14 **Q. IS THERE ANYTHING IN THE RECENT FINANCIAL HISTORY OF THE CITY**
15 **THAT YOU FEEL IS RELEVANT TO THE ANALYSIS AND REVIEW OF THE**
16 **2019 AGREEMENT?**

17 A. Yes. According to the City's 2019 Financial Report, it is a fact that the City has only
18 recently (February 13, 2018) exited Act 47⁴ Status and shed its designation as a financially
19 distressed municipality.⁵ This is a significant accomplishment. However, the City finds
20 itself challenged, as many communities are, by the Covid-19 Pandemic, a condition that

³ Order and Opinion in Dockets M-2018-2640802 and M-2018-2640803, p. 31.

⁴ The Municipalities Financial Recovery Act, Act 47 of 1987, was enacted to provide a broad-based program of fiscal management oversight, technical assistance, planning, and financial aid to municipalities experiencing severe fiscal distress. Pittsburgh has operated under Act 47 status for 14 years, entering on December 29, 2003.

⁵ City of Pittsburgh, Pennsylvania, Comprehensive Annual Financial Report, Year Ended December 31, 2019, Management's Discussion and Analysis, p. xiii.

1 has caused the Governor to declare a state of Fiscal Emergency in at least one other
2 Pennsylvania city.⁶ None of this appears to have been considered in the Commission
3 Orders or by the Bureau of Investigation & Enforcement, who I understand is supposed to
4 determine what is best for all sectors of the public, which would include the City.

5
6 **4. THE 2019 COOPERATION AGREEMENT**

7 **Q. HAVE YOU REVIEWED THE 2019 COOPERATION AGREEMENT AND DO**
8 **YOU BELIEVE THAT IT IS FAIR AND REASONABLE?**

9 A. Yes. I have reviewed the 2019 Agreement, and it is my opinion that it strikes a fair and
10 reasonable balance of the needs of the City and its taxpayers and the PWSA and its
11 ratepayers. I believe that the 2019 Agreement maintains the *quid pro quos* the parties
12 negotiated and are willing to accept to effectuate a transfer of the System to PWSA.

13
14 **Q. DO YOU BELIEVE THAT THE 2019 AGREEMENT INCORPORATES THE**
15 **PRINCIPLES DETAILED BY THE COMMISSION IN ITS OPINION AND**
16 **ORDER IN DOCKETS M-2018-2640802 AND M-2018-2640803?**

17 A. Yes, I believe that the 2019 Agreement establishes a relationship between the City and
18 PWSA that is founded on a business-like approach to transactions between the two entities
19 and that the 2019 Agreement will facilitate the PWSA transition to full compliance with
20 Commission rules and policies. Furthermore, I believe that the principles embodied in the
21 2019 Agreement will provide a fair and reasonable guide to the ongoing relationship
22 between the City and PWSA that will need to exist beyond the termination of the 1995

⁶ City of Chester Declaration of Fiscal Emergency and Concise Statement of Facts (2020-04-13).

1 Lease in September 2025. At that point in time, PWSA will continue to exist as a
2 Pennsylvania Municipal Utilities Authority created by the City.

3

4 **Q. PLEASE EXPLAIN YOUR LAST STATEMENT FURTHER.**

5 A. The City is the incorporating municipality for PWSA and in fact, has recently acted to
6 amend and extend the Articles of Incorporation for the PWSA. Effective February 6, 2020,
7 the City approved an Amendment to the Articles of Incorporation of the PWSA to extend
8 its term of existence to a date that is fifty (50) years from the date of the approval of the
9 Amendment to Articles of Incorporation by the Secretary of the Commonwealth of
10 Pennsylvania and adding stormwater planning, management, and implementation to the
11 purposes of the Authority. The City will continue to exercise a governance function over
12 the PWSA by addressing issues such as this, and it will continue to be the entity responsible
13 for appointing members of the PWSA Board. In addition, there are numerous day-to-day
14 operational issues affecting both the City and PWSA that require coordination and present
15 opportunities for synergies that will benefit taxpayers and ratepayers. The 2019 Agreement
16 provides a fair and reasonable framework between the City as the incorporating
17 municipality and PWSA as the water and sewer service provider.

18

19 **Q. HOW DOES THE 2019 AGREEMENT BROADLY DEFINE THE**
20 **RELATIONSHIP BETWEEN THE CITY AND PWSA?**

21 A. The recitals of the 2019 Agreement set out broad principles of agreement between the two
22 entities. For example, the recitals memorialize the agreement of the City and PWSA to
23 ensure that the System remains under public ownership and control. The recitals also

1 confirm the intent of both parties to ensure that payments between the parties are based on
2 actual, verifiable, direct expenses developed in accordance with customary utility practice.
3 Additionally, the 2019 Agreement memorializes the intent of the parties to cooperate on
4 projects that may impact one another. For example, PWSA sewer or water line
5 construction, valve replacements, manhole restoration and service renewals and
6 replacements all have the potential to adversely impact City street and right-of-way
7 maintenance activities. Likewise, City street paving can impact PWSA asset planning and
8 renewal programs. The 2019 Agreement also defines the PWSA System and notes the
9 existence of combined sanitary and storm sewers, separate sanitary and stormwater
10 collection and conveyance systems as well as water supply, treatment, transmission, and
11 distribution facilities and the role of PWSA in maintaining, operating, renewing, and
12 replacing these assets.

13
14 **Q. DOES THE 2019 AGREEMENT OBLIGATE PWSA OR THE CITY TO**
15 **PURCHASE SERVICES, ONE FROM THE OTHER?**

16 A. No. While the Section 3 of the 2019 Agreement enumerates certain services that may be
17 provided by the City to PWSA, for example, PWSA is not obligated to purchases these
18 services exclusively from the City.

19
20 **Q. DOES SECTION 3 OF THE 2019 AGREEMENT OBLIGATE PWSA TO PAY FOR**
21 **50% OF THE COST OF CITY STREET SWEEPING?**

22 A. Yes, it does.

1 **Q. DO YOU BELIEVE IT IS FAIR AND REASONABLE TO ALLOCATE 50% OF**
2 **THE STREET SWEEPING EXPENSE TO PWSA?**

3 A. Yes, especially given PWSA's responsibilities with respect to the operation and control of
4 Combined Sewers and PWSA's responsibilities for stormwater management. Given that
5 combined sewers and storm sewers drain stormwater runoff from streets and given that the
6 USEPA minimum controls for combined sewer overflows ("CSO") and permitting
7 requirements for Municipal Separate Storm Sewer Systems (commonly called "MS4"
8 systems), it would have been reasonable for 100% of the cost of street sweeping, including
9 the capital cost of street sweeping equipment and vehicles, to be assigned to PWSA. Street
10 sweeping is one of the principal means of capturing plastics, floatables, and other solids
11 before these objectionable materials become part of the water flow regime and must be
12 addressed through CSO controls or otherwise recovered in the receiving streams. In this
13 case, I believe the 2019 Agreement provides a clear benefit to PWSA and its ratepayers by
14 shifting 50% of the cost to City taxpayers.

15
16 **Q. WHAT IS THE 2019 AGREEMENT DOING TO ADDRESS THE MAINTENANCE**
17 **AND OPEATION OF WATER AND SEWER MAINS AND SERVICE LATERALS?**

18 A. Historically, the City maintained these assets and did not bill itself for work done. With
19 respect to City properties, the 2019 Agreement moves to put the City on the same footing
20 as other similar customers while recognizing the need to transition in a gradual but
21 deliberate way. By 2025, the City will be treated in the same fashion as typical commercial
22 customers in that the City will be fully responsible for the operation, maintenance, repair,
23 and replacement of water and sewer service laterals. At present (2020), these costs are

1 absorbed by PWSA in the fashion of the traditional methods used by the City and then by
2 PWSA. In 2021, the City will begin sharing in these costs at a rate of 20% of the actual
3 cost and each year thereafter the allocation to the City will increase by 20% until the full
4 cost is borne by the City in 2025, the year that the 1995 Lease expires and PWSA takes
5 full ownership of the System assets.

6
7 **Q. IS IT APPROPRIATE TO GRADUALLY TRANSITION, IN THE INCREMENTS**
8 **DETAILED IN THE 2019 AGREEMENT, FROM PWSA BEARING THE COST**
9 **OF SERVICE LATERAL MAINTENANCE TO THE CITY BEARING THIS COST**
10 **IN 2025?**

11 A. The use of a deliberate but gradual transition to City funding of service lateral maintenance
12 for City properties is appropriate. This will put the City on the same footing as other PWSA
13 commercial customers in a short period of time. The parties to the 2019 Agreement have
14 negotiated and agreed to a specific timeline that is realistic, achievable, and avoids that
15 potential budgetary shock of suddenly shifting this cost to the City.

16
17 **Q. IS IT TYPICAL FOR CUSTOMERS TO BEAR THE COST OF SERVICE LINE**
18 **MAINTENANCE, REPAIRS, AND REPLACEMENTS?**

19 A. Generally speaking, where investor-owned utilities are concerned, the cost of service line
20 maintenance, repair, and replacement is divided at the property line. That is, the utility is
21 responsible for the portion of the service line that exists in the public right-of-way, and the
22 customer is responsible for the portion of the line on private property (or municipal
23 property in the case of a public customer). In municipal authority systems and municipal

1 water department systems, the point of demarcation that I have described for investor-
2 owned utilities is also followed, but this is not a universal practice. In many cases, the
3 customer owns and maintains the entire service line from the customer's premises to the
4 water or sewer line in the street. It is my understanding that PWSA uses a hybrid approach
5 where the investor-owned model is followed for residential services, but the municipal
6 approach is followed for commercial customers. Given that this is PWSA's customary
7 practice, the approach taken in Section 5.2 of the 2019 Agreement is proper, just, and
8 reasonable.

9
10 **Q. ARE THERE ANY EXCEPTIONS TO THIS PRACTICE?**

11 A. Yes, in Saw Mill Run (Section 5.3 of the 2019 Agreement), the municipal model is
12 employed and the customer is responsible for service lateral maintenance and repairs. This
13 reflects an arrangement in the 1995 Cooperation Agreement wherein the City, not the
14 Authority, was responsible for the maintenance, repair, and replacement of the mains and
15 laterals in Saw Mill Run. By contrast, in the 2019 Agreement, PWSA is responsible for
16 the sewer and water mains, as they are throughout the System, but the customers will be
17 responsible for the full extent of the service laterals.

18
19 **Q. DOES SECTION 5.2.1 ADDRESS UNMETERED CITY SERVICES?**

20 A. Yes. This section of the 2019 Agreement indicates that City service lines that are not
21 metered will be provided with a meter. Further, this section of the 2019 Agreement
22 indicates that the City will share equally in the cost of metering these services. This would

1 have brought the combined resources of the City and PWSA to bear on the problem of
2 numerous unmetered City services.

3

4 **Q. HAS THE COMMISSION ISSUED AN ORDER THAT IMPACTS THIS PORTION**
5 **OF THE AGREEMENT?**

6 A. Yes, in Docket Nos. M-2018-2640802 and M-2018-2640803, the Commission noted that
7 PWSA would be discriminating against its non-City customers by sharing the meter
8 installation cost with the City. Thus, unless the Commission reverses this decision and
9 allows the 2019 Agreement to stand, the cost of meter installation will need to be incurred
10 solely by PWSA and recovered from all of its customers.

11

12 **Q. WHAT IS THE IMPORT OF SECTION 6.1 OF THE 2019 AGREEMENT?**

13 A. Historically, the difference in water rates and charges from Pennsylvania American Water
14 Company and PWSA was material. Pittsburgh residents and businesses located in 29th,
15 30th, 31st, and 32nd wards and portions of the 16th, 18th, 19th, 20th, and 28th wards served
16 by Pennsylvania American Water Company paid more for service than similar customers
17 elsewhere in Pittsburgh who are served by PWSA. The City and PWSA subsidized the
18 cost of service in the Pennsylvania American Water Company service area. That
19 arrangement is described in Section 6.1 of the 2019 Agreement.

20

21 **Q. IS SECTION 6.1 OF THE AGREEMENT STILL EFFECTIVE?**

1 A. It is my understanding and belief that the Water Rate Subsidy Agreement, which was
2 assigned to PWSA, has now been canceled. This section of the 2019 Agreement is no
3 longer of any effect.

4
5 **Q. PLEASE EXPLAIN SECTION 6.2 OF THE 2019 AGREEMENT.**

6 A. This portion of the 2019 Agreement addresses the free allowance for water historically
7 enjoyed by the City and its instrumentalities, which was part of the overall transition terms
8 and conditions contained in the June 1995 Cooperation Agreement and the July 1995
9 Lease. In addition, this section of the 2019 Agreement, while it contains concessions by
10 the City from the 1995 Cooperation Agreement, provides for a deliberate and gradual
11 transition to full cost pricing for metered service to City properties, like the public City
12 swimming pools and parks, and to City affiliates like the Pittsburgh Zoo, which are
13 collectively referred to as Third Party Users. First, effective January 1, 2020, the free
14 allowance of 600 million gallons per year has been eliminated by the 2019 Agreement.
15 The provision of a finite annual quantity of water without charge from PWSA to the City
16 between 1995 and the end of 2019 should be viewed together with the terms of the 1995
17 Lease Agreement that gave PWSA access to and control of the System at a bargain price.
18 While the 2019 Agreement reallocates *quid pro quos* in the original interdependent 1995
19 Cooperation Agreement and the 1995 Lease, it provides reasonable and appropriate
20 gradualism under the unique circumstances here. This is the result of business-like
21 negotiations between the parties. This is preferable to a third party picking and choosing
22 which key terms of this agreement they dislike and disturbing the agreement to a point
23 where it is unacceptable to either or both parties. I would note that the 2019 Agreement is

1 presently written to survive past the gradualism period. If the City were not to provide the
2 services and opportunities for cost savings found in the 2019 Agreement, that ultimately
3 would be bad for ratepayers. Many of PWSA's customers are also City taxpayers who
4 could be subject to higher taxes on the tail of the City's emergence from Act 47 and the
5 depressed tax collections or revenues due to the Covid-19 shutdowns or reductions in
6 business.

7 After eliminating the 600 million gallons per year free allowance for the City, Section 6.2
8 goes on to describe a gradual and deliberate approach to phasing-in the rates to be paid by
9 the City for metered service. The 2019 Agreement sets out a schedule of declining
10 discounts wherein the City would pay 20% of the established rate in 2020, 40% of the
11 established rate in 2021, and so on, until the full rate is charged in 2024, nearly 2 years
12 before the 1995 Lease expires in September 2025 and PWSA becomes the owner of the
13 leased assets. In my opinion, I can say with certainty as an expert in my field that this
14 phase-out is just and reasonable under the unique facts presented and does not constitute
15 an unreasonable preference or unreasonable discrimination given the facts and
16 circumstances here.

17
18 **Q. DOES THE EXISTING PWSA TARIFF HAVE A RATE FOR MUNICIPAL**
19 **CUSTOMERS?**

20 A. No, it does not. It is my understanding and belief that the parties to the 2019 Agreement
21 assume that the existing commercial rates would apply to City connections and that the
22 graduated scale in Section 6.2 would apply to the Commercial rates.

1 **Q. IN YOUR OPINION, IS THE GRADUATED IMPLEMENTATION SCALE IN**
2 **SECTION 6.2 JUST AND REASONABLE?**

3 A. Yes, I believe it is fair, just, and reasonable. It is not an unreasonable preference or
4 unreasonable discrimination due to the circumstances here. Over its history, the City of
5 Pittsburgh Water Department and more recently, the PWSA have not charged the City for
6 service. This is a typical municipal practice. It is also comparable to investor-owned
7 utilities that record use in utility-owned facilities as an authorized but unbilled use.
8 However, given that the PWSA will become the owner of all System assets in 2025 and
9 that PWSA is now regulated as a result of Act 65 of 2017, it is reasonable to take
10 affirmative steps to comply with the Public Utility Code. Section 6.2 of the 2019
11 Agreement provides a deliberate means of moving the City from a point where it has not
12 paid for water service to a point where the City properties are billed the full rate for service
13 provided. The 2019 Agreement embodies the principle of gradualism by moving the
14 effective rates charged by PWSA from zero to the full rate in a relatively short period of
15 time of only five years.

16
17 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY THE TERM “GRADUALISM.”**

18 A. Gradualism is a critical principle of rate making which attempts to balance the potential
19 adverse effects of large and dramatic changes in rates with the need to set rates that recover
20 the revenue requirement from the classes of customers who cause the cost. In *Lloyd v. Pa.*
21 *PUC*, 904 A.2d 1010, 1015 (Pa. Cmwlth. 2006) (*Lloyd*), “rate shock” is a phrase used to
22 describe the public outcry associated with rate increases, while “gradualism” is the concept

1 that rates should be gradually increased over longer periods of time to prevent customers
2 from experiencing rate shock.⁷

3

4 **Q. CAN YOU GIVE AN EXAMPLE OF THE WAY IN WHICH THE COMMISSION**
5 **HAS APPLIED GRADUALISM IN RATE SETTING?**

6 A. Yes. In its most recent decision related to Aqua Pennsylvania Water base rates, the
7 Commission acknowledged that the settled rate design embodied the principle of
8 gradualism in the way in which it continued a long-running effort to consolidate rate groups
9 serviced by the Company.⁸ In this matter, the Commission agreed to the consolidation of
10 22 water rate divisions into 14 rate divisions and of those 14, twelve divisions were grouped
11 into three Rate Zones because of their similarity in rate design. The rates of all of the rate
12 divisions that will continue to exist under the Settlement Rates have been moved closer to
13 each other and to the Rate Zone 1 in order to facilitate further consolidation with the Main
14 Division in future cases. The Order in the Aqua base rate case was issued on May 9, 2019.
15 The base rates that were adjusted by the Commission's Order on May 9, 2019 were put in
16 effect on June 8, 2012. Aqua has publicly stated that it will most likely file a request with
17 the Commission to adjust base rates in 2021.⁹ So, from this we can see that the

⁷ From the Lloyd decision, "gradualism" is a principle of rate design that rates will be gradually increased to avoid "rate shock" in this case caused by transition from capped rates to rates set more closely to the traditional ratemaking process by "gradually" reducing rate of return differentials between the classes. Large rate increases have the potential to cause "rate shock" among customers. Technically, rate shock applies when a rate increase is associated with a significant drop in usage, reflecting the unwillingness or inability of customers to pay for those services. Due to the inelastic demand for essential services, such as utilities, any decrease in usage is minor and transitory. There is a non-technical definition of "rate shock," which is used to describe the public outcry associated with rate increases. To mitigate both forms of rate shock, the remedy is "gradualism," i.e., phasing in rates or closing rate differentials over a longer period of time allowing consumers to gradually make the adjustments in the "elastic" part of their spending so as to pay for increased utility costs, not to mention lessening the pressure on the Commission and the utilities to dampen rate increases."

⁸ Opinion and Order in Docket R-2018-3003558 at Page 58: "(13) the agreement that Aqua's revenue allocation and rate design will be done in such a way as to move all classes closer to their cost of service consistent with the principle of gradualism."

⁹ Joint Petition for Settlement in Docket A-2016-2580061 at Page 6, Para. F.

1 Commission recognizes that the consolidation of rates, with the attendant moves closer to
2 the actual cost of service for each rate class and group, are taken in discrete steps and
3 sometimes over many years. In Aqua Pennsylvania's case, this occurred in 2012, 2019,
4 and will likely continue in 2021.

5

6 **Q. HOW DOES THIS COMPARE WITH WHAT THE PARTIES TO THE 2019**
7 **AGREEMENT HAVE NEGOTIATED?**

8 A. The City and PWSA have negotiated a definitive schedule that will move the City from a
9 point of receiving free service to paying a full cost rate in only five years. The steps are
10 graduated and designed to mitigate the rate shock on the City that would otherwise occur
11 if the full Commercial rates were to be applied at once as a result of the ongoing rate
12 proceeding.

13

14 **Q. ARE YOU AWARE THAT THE COMMISSION HAS ISSUED AN ORDER THAT**
15 **REJECTS THE CONCEPT OF A DISCOUNTED RATE FOR THE CITY?**

16 A. Yes, I understand that the Commission has issued an Order in Dockets M-2018-2640802
17 and M-2018-2640803, at the behest of the Bureau of Investigation and Enforcement
18 (BI&E), that rejected a stepped-billing approach while this Section 507 Proceeding was
19 pending. The Order also opined that PWSA should propose a separate municipal rate class
20 similar to that found in Pennsylvania American Water Company's tariff.

21

22 **Q. HAS THE PWSA PROPOSED A MUNICIPAL RATE?**

1 A. In the Supplemental Testimony of Harold J. Smith in Dockets R-2020-3017951 and R-
2 2020-3017970, PWSA has in fact proposed a distinct municipal rate that would address
3 both metered and flat rate service.

4
5 **Q. DO YOU BELIEVE THAT THIS IS A REASONABLE ALTERNATIVE TO WHAT**
6 **HAS BEEN PROPOSED IN THE 2019 AGREEMENT?**

7 A. First, I believe it would be preferable to leave the 2019 Agreement, which was negotiated
8 at arms-length between the effected parties, intact. As in any negotiation, the parties have
9 the ability to fully understand their positions and balance competing objectives in ways
10 that outsiders cannot possibly hope to appreciate. A concession by PWSA to agree to a
11 five-year rate phase-in could possibly have been offset by a concession by the City to pay
12 for half of the metering cost for un-metered properties. Those of us who were not a part of
13 that negotiation will never fully know the balancing that occurred in the negotiation nor
14 will we be able to appreciate the full impact of eliminating one provision in isolation.

15 Having said that, I have reviewed Mr. Smith's proposal and I believe it is a reasonable
16 attempt to address the objections raised by BI&E in Docket Nos. M-2018-2640802 and M-
17 2018-2640803 while also placing the parties in a position similar to that created by the
18 2019 Agreement with respect to metered water and sewer rates. If Mr. Smith's proposal is
19 adopted by the Commission in Docket Nos. R-2020-3017951 and R-2020-3017970, the
20 metered billings to the City will be comparable to those that I believe would have been
21 anticipated by the 2019 Agreement. In addition, the City will be billed a flat rate for
22 unmetered accounts in 2021 at rates that will generate an additional \$280,596 in flat rate
23 water revenues and an additional \$151,394 in flat rate sewer revenues. This represents an

1 additional \$431,990 and the this will certainly impact the City's 2021 budget. As Mr.
2 Gilman has testified in his statement, this or a flash-cut to full cost of service-based rates¹⁰
3 could cause the City not to be able to open or run many programs, such as its public
4 swimming and spray pools or facilities, kids sports facilities, and playgrounds. Many of
5 these facilities are relied upon by low-income City residents who cannot afford private
6 pools or country clubs. Also, as Mr. Gilman recognizes, many City water-dependent
7 facilities, such as the zoo and aquarium, can be jeopardized absent the phase-in in the
8 Cooperation Agreement. Mr. Gilman also notes many non-residents from the surrounding
9 area visit many of these water dependent City facilities, such as the zoo and the aquarium.
10 There appears to have been no investigation by BI&E of the potential for bad consequences
11 of its positions to the City and its residents, which are part of the public interest BI&E
12 represents. The consequences of BI&E's positions are described more fully by Mr. Gilman
13 and these important facts need to be part of the record considered by the Commission.

14
15 **Q. WOULD YOU PLEASE COMMENT ON SECTION 9 OF THE 2019**
16 **AGREEMENT.**

17 A. Section 9 appears to be an attempt by the parties to further the concept that PWSA is an
18 independent Commission-regulated utility providing water and sewer service in the City.
19 Investor-owned utilities providing service in the City would, of course, be subject to the
20 Public Utility Realty Tax ("PURTA") and would remit payments to the Pennsylvania
21 Department of Revenue. The amounts would be redistributed to the City as the local taxing

¹⁰ According to the Supplemental Testimony of Mr. Harold J. Smith, the full cost of water service based on the Adjusted COSS is \$4,000,870 (Schedule HJS-14W) and the full COSS revenue requirement for sewer service is \$2,288,276 (Schedule HJS-13WW). A flash-cut to these rates, as proposed by BI&E, would result in an additional charge to the City of \$4,636,729 over present rate revenues (\$1,652,417). PWSA St No 7S-D.

1 authority. PURTA is levied against certain entities furnishing utility services regulated by
2 the Commission as PWSA is now subject to regulation. The Commonwealth imposes this
3 tax on public utility realty in lieu of local real estate taxes. Public utilities providing sewage
4 services and municipal authorities furnishing utility service are exempt from the tax.
5 Section 9 of the 2019 Agreement is predicated on the concept that PWSA's water
6 operations would be subject to PURTA because PWSA is regulated by the Commission.
7 In addition, the parties recognize that PWSA had not paid PURTA in the past and they
8 have agreed to a phase-in of the payment similar to the agreement to phase-in water and
9 sewer rates in Section 6.2. This is another area where the parties clearly attempted to apply
10 the concept of gradualism to a cost that had heretofore not been incurred.

11
12 **5. SUMMARY & CONCLUSIONS**

13 **Q. WHAT IS YOUR OVERALL OPINION OF THE 2019 AGREEMENT?**

14 A. I believe the 2019 Agreement was a fair, just, and reasonable effort to balance a number of
15 competing needs in a way that expeditiously moves PWSA to full compliance with the
16 Public Utility Code. It is neither an unreasonable preference nor unreasonable
17 discrimination given the facts and circumstances and bad consequences that could result
18 from alterations to the 2019 Agreement. In addition, I believe the 2019 Agreement
19 recognizes a continuing need for the City and PWSA to cooperate in many respects that
20 will continue after the phase-in and purchase occurs in 2025. Capital improvements
21 undertaken by each entity will impact the assets of the other, so coordination of these
22 activities is well advised and could be jeopardized if the Commission does not preserve the
23 2019 Agreement. The sanitary sewer collection network in the City includes combined

1 storm/sanitary sewers, so proper maintenance of City streets is an essential element of CSO
2 control and compliance. In addition, the PWSA has responsibilities for storm water
3 management and the activities associated with this role will impact the City's compliance
4 with its MS4 Permit. With regard to operations, for the foreseeable future, PWSA
5 employees will continue to benefit from being part of the City's pension and benefits
6 programs. Both entities will benefit from a shared approach to vehicle maintenance and
7 operations (e.g., fuel purchases).

8
9 **Q. IN YOUR OPINION DOES THE 2019 AGREEMENT EMBODY THE**
10 **PRINCIPLES OUTLINED IN THE COMMISSION'S ORDER IN DOCKET NOS.**
11 **M-2018-2640802 AND M-2018-2640803?**

12 A. Yes, the 2019 Agreement ensures that: (a) any payments to the City will be just, reasonable,
13 and substantiated; (b) the City and the PWSA's relationship will be conducted on an arm's
14 length "business-like" basis; and (c) services provided by the City to the PWSA, and vice
15 versa, should be identified with detailed breakdown and be charged based on the related
16 cost of service.

17
18 **Q. DOES THE 2019 AGREEMENT PROMOTE GRADUALISM IN THE**
19 **ESTABLISHMENT OF JUST AND REASONABLE PWSA RATES?**

20 A. Yes. The 2019 Agreement provides for a deliberate, expeditious, and gradual adjustment
21 of metered rates that would be applied to service enjoyed by the City and its Third Party
22 Users. In addition, the 2019 Agreement provides for a gradual increase in expenses that
23 would be borne by PWSA and it also provides for the sharing of capital expenses for meter

1 installations. These capital expenses would normally be borne by PWSA and recovered
2 fully in rates charged to all customers.

3

4 **Q. WHAT IS YOUR RECOMMENDATION WITH RESPECT TO THE 2019**
5 **AGREEMENT?**

6 A. It is my recommendation that the Commission accept the 2019 Agreement in its entirety
7 without modification and allow its provisions to be implemented by the City and PWSA.

8

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

10 A. Yes, and I reserve the right to supplement this testimony as this matter proceeds.

**APPENDIX A –
Qualifications Of
Howard J. Woods, Jr., P.E.**

ACCOMPLISHMENTS (CONTINUED)**HOWARD J. WOODS, JR., P.E.**

KEY EXPERIENCE

Mr. Woods has over 43 years of experience in water and wastewater utility engineering and operations. In his career, he has worked for US EPA, engineering consultants, and in numerous senior engineering and operational roles at a large investor-owned utility. His experience is well rounded, covering all aspects of public water and wastewater operations and management, including outsourcing, acquisitions, maintenance, water production, filtration, distribution, water quality, wastewater collection and treatment, regulatory compliance, and safety.

Mr. Woods managed numerous water and wastewater management contracts. He has assisted clients in outsourcing management activities and transferring ownership of complete utility systems. He has advised clients on alternative contracting approaches and reduced operating costs by renegotiating plant operations contracts. He has helped clients reduce operating expenses and he has provided expert testimony in construction arbitrations, contamination incidents, and utility rate and service proceedings.

EDUCATION

Master of Civil Engineering, Water Resources – Villanova University

Bachelor of Civil Engineering (cum laude) – Villanova University

ACCOMPLISHMENTS

- Directed and managed the procurement process leading to the sale of a municipal wastewater system in Southeastern Pennsylvania. The sale of the Upper Dublin Township Sanitary Sewer System will yield \$20,000,000 for a system serving approximately 8,000 connections and having annual revenues of \$3,000,000. Advised the Township on alternative outsourcing and contracting approaches, reduced interim operating expenses by 30% prior to the sale by renegotiating the plant operations contract.
- Prepared an analysis of ownership alternatives for Lower Makefield Township's sanitary sewer collection system. Managed a procurement process that led to the receipt of a \$17 million bid for the potential sale of a system serving 10,700 residential and commercial customers.
- Assessed an existing public private partnership contract and future contracting

ACCOMPLISHMENTS (CONTINUED)

- alternatives for the Jersey City Municipal Utilities Authority (JCMUA). Recommended alternative contract terms and assisted JCMUA in negotiating a new ten-year operations agreement saving approximately \$3,000,000 per year.
- Assisted Greater Ouachita Water Company, a non-profit Louisiana water and sewer utility, in evaluating operating contract alternatives. Provided assistance in identifying qualified operators to be invited to bid a multi-year full-service operating contract. Assisted in evaluating bids and in contract negotiations.
 - Completed an independent assessment of ownership and operating alternatives for the Township of Sparta water utility. The study evaluated current operating and financial conditions of the utility and considered two alternative service delivery approaches: contract operation and a sale of the system to an investor-owned utility.
 - Completed an assessment of the financial and operating impacts of a proposal by a Pennsylvania municipality to dissolve its municipal water and sewer authority. The authority served multiple political subdivisions and dissolution would have resulted in regulation by the Pennsylvania Public Utility Commission. The additional regulatory burdens identified and limitations on municipal financing capacity resulted in a recommendation to retain authority ownership and operations.
 - Completed an analysis of ownership alternatives for the Bristol Township Sewer Department. Reviewed capital needs and financing arrangements, rate structure and system revenues, operational costs, and regulatory compliance issues. Assessed potential interest in the acquisition of the system by other municipal and investor-owned entities and assessed the possible impact of a sale on rates and service quality. The study recommended retention of the system by the Township and offered recommendations to reduce costs and improve staffing levels.
 - Completed the assessment of a potential water utility acquisition by a Pennsylvania Municipal Authority. Assisted the Authority in developing a bid proposal for the acquisition and assessing the impact on revenue requirement and consumer rates resulting from the acquisition.
 - Provided litigation support to Cornwall Borough Municipal Authority in its efforts to prevent Cornwall Borough from dissolving the Authority. Provided expert testimony on the service and financial impacts of dissolving the Authority. Developed capital plans for the Authority and provided expert testimony regarding the need to construct certain fire protection and other distribution improvements.
 - Completed an assessment of an investor-owned utility offer to acquire the assets of Pennsylvania Municipal Water & Sewer Authority. Evaluated the acquisition and rate proposal, developed independent assessments of the value of the assets consistent with Pennsylvania Act 12, and prepared recommendations for the Authority's use in considering the proposal.
 - Completed an evaluation of the revenue requirement associated with the decommissioning of a wastewater treatment plant and the diversion of wastewater to a

ACCOMPLISHMENTS (CONTINUED)

- regional treatment works for the North Wales Water Authority. Assessed the rate impact to customers of potentially retaining and improving an existing wastewater treatment plant and the rate impact of joining a regional treatment system. The evaluation supported the decision to regionalize the sewage treatment function.
- Developed a risk assessment model for a Pennsylvania Municipal Utilities Authority to allow the Authority to prioritize investments on numerous wells threatened by regional perfluorinated compound contamination. The assessment balanced risk of contamination, cost, and feasibility of providing treatment, the use or regional alternative supplies owned by the Authority and regional interconnections/system acquisitions.
 - Assisted the Banco Gubernamental de Fomento para Puerto Rico, Autoridad para el Financiamiento de la Infraestructura de Puerto Rico and Pricewaterhouse-Coopers in developing a new operating contract for the Puerto Rico Aqueduct and Sewer Authority (PRASA). The contract was developed, bid, and awarded in less than six months, cutting the normal procurement time by nearly two-thirds. The value of the contract was \$300 million per year.
 - Completed an independent assessment of the planning and engineering decision making for a major water treatment plant renovation project undertaken by Aquarion Water Company of Connecticut in Stamford Connecticut. Evaluated process selection decisions, project sizing and regulatory compliance issues, and testified before the Connecticut Department of Public Utility Control on the findings of the evaluation.
 - Completed audits of water production operations and water quality management functions at Aquarion Water Company of Connecticut, Aquarion Water Company of Massachusetts, and Aquarion Water Company of New Hampshire. Assessed operational procedures and staffing levels, reviewed risk management plans including emergency response plans and dam safety programs, evaluated programmed and preventative maintenance systems, and developed recommendations to assist the Company in lowering the cost of service while reducing risk and improving reliability.
 - Completed an audit of the watershed and environmental management functions at Aquarion Water Company of Connecticut. Assessed watershed management, monitoring and operational procedures, reviewed compliance tracking systems, reviewed risk management strategies, and developed recommendations to assist the Company in reducing risk and improving reliability and watershed protection efforts.
 - Completed a management audit of the water distribution function at Aquarion Water Company of Connecticut. Evaluated system monitoring and maintenance practices, assessed the impact of the use of contract maintenance, and construction services to reduce Company workforce levels. Developed recommendations to improve the Company's programmed and preventative maintenance systems, corrosion control procedures, and non-revenue water control programs.
 - Completed a management audit of the engineering and planning functions at Aquarion

ACCOMPLISHMENTS (CONTINUED)

- Water Company of Connecticut. Evaluated the Company's planning practices and procedures and developed recommendations to assure the efficient application of capital to the renewal, replacement, and expansion of the Company's extensive utility plant assets.
- Assisted Greater Ouachita Water Company, a Louisiana non-profit water and sewer utility, in identifying the cause of water quality complaints resulting from poor color removal. Recommended improvements to minimize capital modifications of the chemical feed, filter backwash and spent wash water treatment systems.
 - Completed a Comprehensive Technical Assistance (CTA) project for the City of New Brunswick (NJ) Water Utility. The CTA, which was Ordered to be completed by the New Jersey Department of Environmental Protection, developed operating procedures to rectify numerous performance limiting factors that contributed to several drinking water quality issues and Safe Drinking Water Act Rules compliance issues. Completion of the CTA satisfied a major component of the Consent Order.
 - Provided ongoing technical and operations assistance to the Shelter Island Heights Property Owners Corporation related to the operation and maintenance of the community water and sewer utilities. Developed recommendations for asset maintenance and renewal as well as employee safety.
 - Completed a Vulnerability Assessment for a municipally-owned public water system in northern New Jersey. Organized, planned, and conducted the assessment using the RAM-WSM methodology. Evaluated existing physical protection systems at utility facilities, developed threat assessments and adversary sequence analyses, and prepared recommendations to reduce risk.
 - Completed an energy management evaluation for the Elmira (NY) Water Board and provided operator training on energy management strategies. Recommendations from the study allowed the client to reduce energy expenses by 30% through a series of operational modifications.
 - Completed an energy management audit of the Pittsburgh Water and Sewer Authority and identified strategies for reducing power consumption. The results of this investigation provided the foundation for the Authority and its contract manager to develop and implement more effective maintenance and operations procedures to reduce energy costs.
 - Served as an expert witness in a matter involving the diversion of service by a large commercial customer of Atlantic City Municipal Utilities Authority (ACMUA). Statistically analyzed customer water use and billing records by relating water use variables (e.g. weather, occupancy rates, and restaurant output) to recorded consumption. Identified periods of service diversion and assisted ACMUA in the collection of revenues and penalties due.
 - Served as an expert witness in a matter involving excess billing of a large commercial customer of a New Jersey public utility. Statistically analyzed usage patterns over a

ACCOMPLISHMENTS (CONTINUED)

- ten-year period and identified periods of excess billing. Assisted the customer in negotiating a \$50,000 settlement of the dispute.
- Provided litigation support in a dispute involving cost of service allocations made by Erie City Water Authority (ECWA) in establishing rates covering a ten-year period beginning in 2004. Prepared an expert report addressing the cost allocation methods used by ECWA and demonstrated that the determination of the ECWA revenue requirement was fair and reasonable and that the allocation methods used to assign costs to various rate classes were done using reasonable professional judgment and standard professional care.
 - Provided litigation support in a dispute involving water rates billed by Passaic Valley Water Commission to retail customers in the Borough of Lodi. Reviewed past rate setting practices and related rate covenants in the Lodi water system lease, prepared expert testimony and assisted the Passaic Valley Water Commission in developing rates consistent with the Court's Order.
 - Developed a rate study and assisted in the renegotiation of a sewer service agreement between Ridgefield Borough and Palisades Park Borough. The rate study formed the basis of a settlement of ongoing litigation and provided a cost allocation methodology incorporated into a new service agreement between the municipalities.
 - Developed rate studies for the Village of Ridgewood Water Utility for 2010 through 2016 to satisfy a Court Order to re-evaluate and re-adopt rate resolutions in response to a Complaint by Midland Park, Glen Rock, and Wycoff. Developed allocation factors for shared municipal services and developed the revenue requirement for each year for the Water Utility. Produced a final rate design consistent with the Court Order.
 - Developed a model of the major water resources facilities in the Passaic, Pompton, Ramapo, and Hackensack River Basins that allows the calculation of the safe and dependable yield of the Wanaque/Monksville, Point View, and Oradell Reservoir systems under varying drought conditions. The model is being used by Passaic Valley Water Commission to evaluate long-term water supply management strategies and to plan for future water supply needs.
 - Assisted New York City Department of Environmental Protection in compiling a report on the estimated safe yield of the City water supply reservoir system. A current assessment of safe yield was required by agreement of the Parties to the 1954 US Supreme Court Decree governing the use and export of water from the Delaware River Basin. Provided additional consulting assistance on plans to assure system reliability during planned repairs to the Roundout-West Branch Tunnel, an aqueduct that transports up to 800 million gallons of water per day to the City from the Delaware Basin reservoir system.
 - Developed an analysis of the costs of the Hickory Log Creek Reservoir and the yield sharing arrangements between the City of Canton and the Cobb County-Marietta Water Authority. Developed recommended methods to assess the impact of US Army Corps

ACCOMPLISHMENTS (CONTINUED)

of Engineers operating policies on future operating and capital cost allocations.

- Prepared a long-range water supply needs forecast for the Passaic Valley Water Commission. Analyzed water use patterns within the Commission's retail service area and for over two-dozen large contract customers. Produced population forecasts for the service area and individual water demand forecasts for each contract sale-for-resale customer using statistical and numeric forecasting techniques. The forecast projects total annual demand, average day, maximum month, and maximum day demands and forms the basis for other ongoing facility and operations planning efforts.
- Prepared a long-range water supply needs forecast for the North Wales Water Authority. Analyzed water use patterns within the Authority's retail service and identified the water supply requirement for the Authority's share in a regional water supply system. Produced customer forecasts for the service area and individual water demand forecasts for large industrial customers and existing and potential wholesale water customers. Applied statistical and numeric forecasting techniques to assess trends in unit water use for each customer class. The forecast projects total annual demand, average day, maximum month, and maximum day demands and forms the basis for other ongoing facility and operations planning efforts.
- Developed a Water Allocation Permit renewal and extension application for the Passaic Valley Water Commission. Secured a new 25-year permit for the diversion of surface water from the Pompton and Passaic Rivers. The new water diversion permit for the Commission supports more flexible operations and more efficient source utilization. The Commission serves a retail service population of 325,000 and effectively serves an additional 260,000 people through sale-for-resale connections.
- Prepared a cost of service allocation study for Passaic Valley Water Commission, a regional water system that serves a large urban retail service population and a significant outlying area through direct retail and wholesale water sales. Allocated costs based on standard methodologies to Owner Cities, External Cities Retail, and Wholesale classes of service. The Commission has annual revenues in excess of \$71 million.
- Prepared a cost of service allocation study for three Pennsylvania Municipal Utilities Authorities considering a joint water supply expansion project. Evaluated and allocated anticipated construction and operating costs for the plant expansion and assigned costs of existing facilities using a commodity-demand allocation method. Developed a recommended tariff design to allow for the fair recovery of prospective costs associated with the expanded facilities.
- Prepared a cost allocation study and tariff design study for Bedminster Municipal Utilities Authority. The study developed an integrated five-year financial plan for the Authority and allocated the revenue requirement among water and sewer services. Rates were developed to allow the Authority to properly recover costs from its various water and sewer customer classes.

ACCOMPLISHMENTS (CONTINUED)

- Developed a commercial rates study for Whitemarsh Township Authority that resulted in the modernization of the Authority's commercial rate structure. A system comprised of 33 different rate costs was replaced with a uniform rate structure, including a fixed service charge based on water meter capacity ratios and volumetric changes for the quantity of water actually used.
- Developed a residential rates study for Whitemarsh Township Authority that evaluated the cost/benefits of converting a fixed-rate EDU tariff to a volumetric tariff. Developed recommendations for new rates for the ensuing five-years.
- Developed an initial tariff study for Branchville Borough. The Borough had constructed a new community sanitary sewer system to replace hundreds of on-lot disposal systems and small, individual wastewater treatment systems located throughout the Borough. Using engineer's estimates of operating costs, developed a total revenue requirement, and allocated that revenue requirement to three classes of customer service. Developed an initial rate structure designed to recover the projected full revenue requirement.
- Prepared a cost of service allocation study for Southeast Morris County Municipal Utilities Authority, a regional water system that serves a suburban retail service population and several wholesale water customers. Allocated costs based on standard methodologies to various classes of residential, commercial industrial, and wholesale service. Developed a plan to move each service class to full-cost pricing over time.
- Developed a five-year comprehensive business plan for Passaic Valley Water Commission. This plan moved the Commission from an annual operating budget to a five-year budget that links operating costs, capital construction and debt service requirements to customer growth and revenue requirements and rates. The plan was instrumental in obtaining an improved bond rating and positioning the Commission to undertake a major capital improvement program.
- Developed a five-year comprehensive business plan for the North Wales Water Authority. This plan established a rolling five-year operating and capital budget that links operating costs, capital construction, and debt service requirements to customer growth and revenue requirements and rates. The plan was instrumental in maintaining current rates while also maintaining the Authority's AA bond rating.
- Served as an expert witness in an arbitration involving a dispute between a New Jersey municipal water department and A.C. Schultes, Inc., a well contractor. Assisted A.C. Schultes in supporting its claim for a contract modification and the recovery of unanticipated expenses. The arbitrator awarded the contractor 100% of its cost claim.
- Served as an expert witness in a matter involving the alleged contamination of a New Jersey municipal water system with heavy metals and organic chemicals. Reviewed over 38,000 discrete water quality sample results, analyzed the operational records of the system, and developed a computer model (EPANET2) depicting water flow and

ACCOMPLISHMENTS (CONTINUED)

water quality changes over a period spanning two decades. Assisted the client in successfully defeating a threatened class action lawsuit at the certification level.

- Served as an expert witness in a matter involving the alleged contamination of nearly 600 private wells in an area near Fairbanks, Alaska. Evaluated alternatives for the provision of alternate water supplies including the extension of an investor-owned water system, a publicly-owned water system, and a variety of on-site treatment and supply options. Assisted in the defense of the former owner of the site where the contamination was later alleged to have originated.
- Served as a mediator involving a dispute between the Long Beach Township Water Department and Don Siegel Construction Co., Inc., a pipeline installation contractor. Assisted the parties in resolving various construction cost claims and in interpreting the contract construction documents. Litigation over the disputes was avoided.
- Assisted a regional developer in obtaining wastewater planning approval for a project in an area determined to be in an “overload” condition by Pennsylvania DEP. This effort required the facilitation of negotiations between regional wastewater entities for wastewater conveyance and treatment services, expert consulting with a municipality and PA DEP concerning the municipality’s update to its Act 537 facilities plan, and coordination with other engineering consultants to secure final permit approvals.
- Developed a review of alternatives for the renovation or replacement of the Ridge Road Reservoir for Perkasio Regional Authority. Analyzed alternatives for reconstructing or replacing an in-ground water distribution reservoir. Developed a scope of services for a site geotechnical evaluation and assessed the potential cost of various renewal strategies.
- Reviewed engineering plans and operational practices in numerous water and wastewater rate adjustment proceedings and quality of service proceedings for the New Jersey Division of Rate Counsel. Assessed utility engineering design and construction plans, developed alternatives to utility proposed projects, and evaluated the utility companies' ability to render safe, adequate, and proper water or wastewater service. Provides expert testimony in the following utility rate, franchise expansion and service quality proceedings:
 - Acacia Lumberton Manor Fire Service Complaint BPU
Docket No. WC01080495
 - Andover Utility Company
BPU Docket WR17070726
 - Applied Waste Water Management Rates
BPU Docket No. WR03030222
 - Applied Waste Water Management Base Rates
BPU Docket No. WR08080550
 - Applied Waste Water Management Franchise

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WE03070530
- Applied Waste Water Management Andover Franchise
BPU Docket No. WE04111466
- Applied Waste Water Management Hillsborough Franchise
BPU Docket No. WE04101349
- Applied Waste Water Management Oakland Franchise
BPU Docket No. WE04111467
- Applied Waste Water Management Union Twp Franchise
BPU Docket No. WE050414
- Applied Waste Water Management Tewksbury Franchise
BPU Docket No. WR08100908
- Aqua NJ Freehold Franchise Extension Review
BPU Docket WE09120965
- Aqua NJ Pine Hill Franchise
BPU Docket No. WE05070581
- Aqua NJ Upper Freehold Franchise
BPU Docket No. WE05100822
- Aqua NJ Readington Wastewater Franchise
BPU Docket No. WE07030224
- Aqua New Jersey Base Rate Case
BPU Docket No. WR07120955
- Aqua New Jersey Acquisition of Bloomsbury Water
BPU Docket WE09050360
- Aqua New Jersey Acquisition of Harkers Hollow Water
BPU Docket WM09020119
- Aqua New Jersey Base Rate Adjustment
BPU Docket No. WR09121005
- Aqua New Jersey Base Rate Adjustment
BPU Docket No. WR11120859
- Aqua New Jersey Base Rate Adjustment
BPU Docket WR14010019
- Aqua New Jersey Base Rate Adjustment
BPU Docket WR18121351
- Aqua New Jersey DSIC Foundational Filing
BPU Docket No. WR12070685
- Aqua New Jersey Byram Franchise & Acquisition
BPU Docket No. WE15080957
- Aqua New Jersey Cliffside Park Acquisition
BPU Docket No. WE16040307
- Aqua New Jersey Acquisition of Oakwood Village
BPU Docket WM16080739
- Aqua New Jersey Base Rate Adjustments

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WR16010089
- Aqua NJ Distribution System Improvement Charge
Foundational Filing
BPU Docket No. WR16010090
- Atlantic City Sewerage Company Base Rate Adjustment
BPU Docket No. WR09110940
- Atlantic City Sewerage Company Base Rate Adjustment
BPU Docket WR11040247
- Atlantic City Sewerage Company Base Rate Adjustment
BPU Docket WR14101263
- Bayonne MUA – United Water NJ/ Kohlberg, Kravis, Roberts Joint
Venture Operations & Financing Agreement
BPU Docket No. WM12080777
- Bayview Water Company Rates
BPU Docket No. WR01120818
- Camden and United Water Environmental Services, Inc.
Management Services Agreement Modifications
BPU Docket No. WM12050457
- Borough of Haledon Rates
BPU Docket No. WR01080532
- City of Orange Privatization Review
BPU Docket No. WO03080614
- Crestwood Village Loan Approval
BPU Docket No. WF04091042
- Crestwood Village Water Co Base Rates
BPU Docket No. WR07090706
- Elizabethtown Water Co. v. Clinton Board of Adjustment BPU
Docket No. WE02050289
- Elizabethtown Water Company Rates
BPU Docket No. WR03070510
- Elizabethtown Water Company Franklin Franchise
BPU Docket No. WE05020125
- Elizabethtown Water Company Purchased Water Adjustment Clause
BPU Docket No. WR04070683
- Environmental Disposal Corporation Main Extension Agreement
BPU Docket No. WO04091030
- Environmental Disposal Corporation Rates
BPU Docket No. WR04080760
- Environmental Disposal Corporation Rates
BPU Docket No. WR07090715
- Environmental Disposal Corporation Change in Control
BPU Docket No. WM15040492

ACCOMPLISHMENTS (CONTINUED)

- Fayson Lake Water Company Rates
BPU Docket No. WR03040278
- Fayson Lake Water Company Base Rates
BPU Docket No. WR07010027
- Fayson Lake Water Company Base Rates
BPU Docket WR14050405
- Fayson Lake Water Company Base Rates
BPU Docket WR17101041
- Gordon's Corner Water Company Rates
BPU Docket No. WR03090714
- Gordons Corner Water Co Base Rate Adjustment
BPU Docket No. WR10060430
- Gordons Corner Water Co Base Rate Adjustment
BPU Docket No. WR12090807
- Gordons Corner Water Co Base Rate Adjustment
BPU Docket WR14040325
- Gordons Corner Water Co Base Rate Adjustment
BPU Docket WR18030268
- Jensens Deep Run Franchise Transfer
BPU Docket No. WE10070453
- Lake Valley Water Company Rates
BPU Docket No. WR04070722
- Mahwah Tank Maintenance Privatization
BPU Docket No. WO15050548
- Middlesex Water Company Rates
BPU Docket No. WR03110900
- Middlesex Water Company Rates
BPU Docket No. WR05050451
- Middlesex Water Company Base Rates
BPU Docket No. WR07040275
- Middlesex Water Co Transmission Main Prudency Review
BPU Docket No. WO08020098
- Middlesex Water Company Base Rates
BPU Docket No. WR09080666
- Middlesex Water Company DSIC Foundational Filing
BPU Docket No. WR12111021
- Middlesex Water Company Base Rates
BPU Docket No. WR12010027
- Middlesex Water Co DSIC Foundational Filing
BPU Docket No. WR14050508
- Middlesex Water Company Base Rate Adjustment
BPU Docket No. WR15030391

ACCOMPLISHMENTS (CONTINUED)

- Middlesex Water Company Base Rate Adjustment
BPU Docket No. WR17101049
- Montague Water Company Rates
BPU Docket No. WR03121034
- Montague Sewer Company Rates
BPU Docket No. WR03121035
- Montague Sewer Company Rates
BPU Docket No. WR05121056
- Montague Water Company Acquisition
BPU Docket No. WM10060432
- Montague Water & Sewer Company Rates
BPU Docket No. WR12110983
- Mount Holly Water Company Rates
BPU Docket No. WR03070509
- Mount Olive Villages Water & Sewer Franchise
BPU Docket No. WE03120970
- Mount Olive Villages Sewer Base Rate Adjustment
BPU Docket No. WR16050391
- Mount Olive Villages Water Base Rate Adjustment
BPU Docket No. WR16050390
- New Jersey American Water Company Rates
BPU Docket No. WR03070511
- New Jersey American Water Company Rates
BPU Docket No. WR06030257
- New Jersey American Water Acquisition of Mt. Ephraim
and Approval of Municipal Consent
BPU Docket No. WE06060431
- New Jersey American Water Purchased Water Adjustment Clause
BPU Docket No. WR05110976
- New Jersey American Water Company – Mantua Franchise
BPU Docket No. WE07060372
- New Jersey American Water Co – Rocky Hill Franchise
BPU Docket No. WE07020103
- New Jersey American Water Company Rates
BPU Docket No. WR08010020
- New Jersey American Hopewell Township Franchise
BPU Docket No. WE07120981
- New Jersey American Water Co/City of Trenton
Joint Petition for Approval of the Sale of Water System
BPU Docket No. WE08010063
- New Jersey American Water Company Petition for Approval of a
Distribution System Improvement Charge (DSIC)

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WO08050358
- New Jersey American Water Co Management Audit
BPU Docket No. WA09070510
- New Jersey American Water Base Rate Adjustment
BPU Docket No. WR10040260
- New Jersey American Water Company Franklin Franchise Review
BPU Docket No. WE11070403
- New Jersey American Water Company Base Rate Adjustment
BPU Docket No. WR11070460
- New Jersey American Water Company Base Rate Adjustment
BPU Docket No. WR15010035
- New Jersey American Water Company DSIC Foundational Filing
BPU Docket No. WR15060724
- New Jersey American Water – Eastampton Franchise Review
BPU Docket No. WE17020139
- New Jersey American Water – Shorelands Water Co. Acquisition
BPU Docket No. WM16101036
- New Jersey American Water Co Howell Franchise Review
BPU Docket No. WE17111148
- New Jersey American Water Base Rate Adjustment
BPU Docket No. WR17090985
- New Jersey American Water Acquisition of Mt. Ephraim Sewer
BPU Docket WM19010117
- New Jersey Natural Gas Rates
BPU Docket No. GR07110889
- Oakwood Village Sewer Change in Control
BPU Docket No. WM07070535
- Oakwood Village Sewer System Change in Control
BPU Docket No. WM15091006
- Parkway Water Company Rates
BPU Docket No. WR05070634
- Pinelands Water Company Rates
BPU Docket No. WR03121016
- Pinelands Wastewater Company Rates
BPU Docket No. WR03121017
- Pinelands Water Company Rates
BPU Docket No. WR08040282
- Pinelands Wastewater Company Rates
BPU Docket No. WR08040283
- Pinelands Water Company Rates
BPU Docket No. WR120807342
- Pinelands Wastewater Company Rates

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WR12080735
- Pinelands Water Company Rates
BPU Docket No. WR15101200
- Pinelands Wastewater Company Rates
BPU Docket No. WR15101202
- Pinelands Water Company Rates
BPU Docket No. WR19030417
- Pinelands Wastewater Company Rates
BPU Docket No. WR19030418
- Rahway Operational Services Agreement Review
BPU Docket No. WO16070678
- Rock GW, LLC Determination of Applicability of Board Regulation
BPU Docket No. WO08030188
- Rock GW, LLC Determination of Applicability of Board Regulation
BPU Docket No. WO10100739
- Roxbury Water Company Rates
BPU Docket No. WR09010090
- Roxciticus Water Company Change in Control
BPU Docket No. WM15080982
- SB Water & Sewer Company Acquisition
BPU Docket No. WM16030197
- Seabrook Water Company Franchise
BPU Docket No. WC02060340
- Seaview Harbor Water Company Change in Control
BPU Docket No. WM13100957
- Shorelands Water Company Rates
BPU Docket No. WR04040295
- Shorelands Water Company Base Rates
BPU Docket No. WR10060394
- Shore Water Company Rates
BPU Docket No. WR09070575
- South Jersey Water Supply Change in Control
BPU Docket No. WM07020076
- Suez Arlington Hills Wastewater Rates
BPU Docket No. WR16060510
- Suez Water NJ DSIC Foundational Filing
BPU Docket No. WR13030210
- Suez Water NJ Borstad Water Company Acquisition
BPU Docket No. WE15111247
- Suez Water New Jersey Base Rate Adjustment
BPU Docket No. WR15101177
- Suez Water Toms River Base Rate Adjustments

ACCOMPLISHMENTS (CONTINUED)

- BPU Docket No. WR15020269
- Suez Water Toms River DSIC Foundational Filing
BPU Docket WR13111128
- Suez Water NJ – USG Cottonwood Agreement
BPU Docket No. WR15070856
- Suez Water NJ Electrical Efficiency Contract Eval.
BPU Docket No. WO17050494
- Suez Water Princeton Meadows Deferred Accounting
BPU Docket WF17030186
- SUEZ Water NJ Acquisition of West Milford MUA
BPU Docket WM17111189
- SUEZ Water NJ Base Rate Adjustment
BPU Docket WR18050593
- SUEZ Water NJ Acquisition of Independence MUA
BPU Docket WM18010008
- SUEZ Water NJ Acquisition of West Milford MUA
BPU Docket WM17111189
- SUEZ Water NJ Acquisition of East Brookwood
BPU Docket WM18040449
- United Water Acquisitions Evaluation
BPU Docket No. WM02060354
- United Water Arlington Hills Franchise
BPU Docket No. WE07020084
- United Water Arlington Hills Sewerage Base Rates
BPU Docket No. WR08100929
- United Water New Jersey Base Rates
BPU Docket No. WR07020135
- United Water New Jersey Base Rates
BPU Docket No. WR08090710
- United Water New Jersey Base Rates
BPU Docket No. WR11070428
- United Water New Jersey DSIC Foundational Filing
BPU Docket No. WR12080724
- United Water New Jersey Management Audit
BPU Docket: WA05060550
- United Water New Jersey Affiliate Transaction Review – JPI Painting
BPU Docket No. WO10060410
- United Water New Jersey Affiliate Transaction
Review – Utility Service Contract
BPU Docket No. WO10060409
- United Water New Jersey Mt Arlington Franchise Extension Review
BPU Docket No. WE09121006

ACCOMPLISHMENTS (CONTINUED)

- United Water New Jersey Vernon Township Franchise Extension Review
BPU Docket WE10110870
 - United Water New Jersey Vernon Township Franchise Extension Review
BPU Docket WE11030155
 - United Water Great Gorge/Vernon Sewer Base Rates
BPU Docket No. WR10100785
 - United Water Toms River Base Rates
BPU Docket No. WR080830139
 - United Water Toms River Base Rates
BPU Docket No. WR12090830
 - United Water West Milford Sewerage Base Rates
BPU Docket No. WR08100928
 - Village Utility Inc Franchise and Initial Tariff
BPU Docket 180808926
-
- Assisted the New Jersey Division of Rate Counsel in assessing drought conditions effecting water utilities in New Jersey during the 2002 drought. Analyzed proposals for water supply interconnections to mitigate drought impacts, developed position statements regarding pricing alternatives, and provided a critique of State water supply management initiatives prior to and during drought conditions.
 - Assisted the New Jersey Division of Rate Counsel in assessing the need for a Distribution System Improvement Charge (DSIC) to allow regulated water utilities to accelerate the recovery of capital investments in water distribution assets (BPU Docket WO10090655). Provided financial analyses of current and prospective distribution renovation programs. Reviewed and commented on draft language for a generic rule making.
 - Assisted the Delaware Public Advocate in assessing drought conditions effecting water utilities in northern New Castle County during the 2002 drought (PSC Docket No. 323-02). Reviewed water utility operations prior to and during the drought emergency, assessed the effectiveness of use curtailments, and developed recommendations to assure proper, cost-effective resource management for future drought conditions.
 - Assisted the Delaware Public Service Commission in a determination of rate base for Artesian Water Company in PSC Docket 08-96. Evaluated selected plant facilities and proposed projects to determine the need to impute revenues for under-utilized facilities in establishing new base rates.
 - Assisted the Delaware Public Service Commission in an evaluation of the Initial Tariff filing submitted by Tidewater Environmental Services, Inc. (PSC Docket No. 11-274WW) for wastewater service in a development known as "The Ridings." Evaluated projected operating expenses and rate base claims and developed recommendations that avoided a potential 17.5% rate increase.

ACCOMPLISHMENTS (CONTINUED)

- Prepared an assessment of the water supply capacity certification and water conservation plan submitted by United Water Delaware in PSC Docket 09-282 on behalf of the Delaware Public Service Commission. Evaluated the capacity of the sources of supply available to the Company with respect to projected demands and the requirements of the Delaware Water Supply Self-Sufficiency Act of 2003. Assessed the effectiveness of water conservation activities and developed recommendations to improve the efficiency and effectiveness of Company conservation programs.
- Provided expert testimony on behalf of the Delaware Public Advocate in the matter of Inland Bays Preservation Company's request for an increase in wastewater rates before the Delaware Public Service Commission (PSC Docket No. 09-327-WW). Evaluated plant facilities, proposed projects, and the allocation of developer contributions in aid of construction to determine rate base. Assessed the level of operating expenses claimed in the filing and recommended adjustments to substantially lower the requested rate increase.
- Provided expert testimony on behalf of the Delaware Public Advocate in the matter of Tidewater Environmental Services, Inc.'s request for a base rate adjustment for seven of its regulated wastewater utility systems (PSC Docket No. 11-329WW). Established independent revenue requirements for each system to assure that costs and rates were properly matched for each independent group of customers served by the Company. Recommended an overall rate adjustment that was equivalent to 60% of the initial rate request and was within 12% of the final Ordered rates.
- Provided expert testimony on behalf of the Delaware Public Advocate in the matter of Tidewater Utilities, Inc.'s request for a base rate adjustment for its regulated water systems throughout Delaware (PSC Docket 13-466). Provided testimony on engineering and accounting issues related to the determination of the Company's revenue requirement that resulted in a rate settlement equivalent to twenty percent of the Company's filed rate request.
- Prepared a tariff design evaluation for the Pequannock River Basin Regional Sewer Authority to assess alternative rate structures for service to regional participating municipalities. Evaluated current budgeting and billing systems and alternatives to equitably allocate regional system costs to the participating municipalities.
- Provided expert testimony on behalf of the Village of Ridgewood Water Utility in a dispute regarding the regional allocation of costs to retail customers serviced beyond the corporate boundaries of the Village. Reviewed historical budgets and actual financial results, developed revised and updated cost allocations for shared services, and provided recommendations on retail rates charged within and outside of the Village.
- Provided expert advice to the Borough of Ridgely regarding the failure of a 36-inch diameter PCCP water main owned by an investor-owned utility. Assisted the Borough in negotiating a suitable restoration and replacement plan and in negotiations for the recovery of damages resulting from the break.

ACCOMPLISHMENTS (CONTINUED)

- Provided expert testimony on behalf of the Township of Newtown before the Pennsylvania Public Utility Commission (PUC Docket No. P-2012-2327738) in regard to a dispute between the Township and Newtown Artesian Water Company regarding the siting of a proposed new well. Evaluated current and future water supply needs, water quality and treatment needs, and the revenue requirement of the proposed project relative to other alternatives.
- Managed 175 municipal and commercial water and wastewater contracts located in seven states for American Water Services/AmericanAnglian Environmental Technologies. Through these contracts, cost effective water and wastewater service was provided to over one million people. Contracts included the 160 MGD City of Buffalo, NY water system and the 30 MGD Scranton Sewer Authority wastewater operations. Directed an operations staff of 700 employees. Eliminated financial losses while improving safety and quality.
- Directed a marketing and business development staff for AmericanAnglian Environmental Technologies that secured the largest operations and maintenance contract awarded in the US in 1999 and the second-best overall performance in the US market. Increased revenues by 28%. Evaluated potential contract operations and design/build projects to identify operating and capital savings on hundreds of potential contracts throughout the United States. Evaluations included Atlanta, Georgia; Scranton, Pennsylvania; and Springfield, Massachusetts.
- Managed the operations of 16 water systems for New Jersey-American Water Company, a regulated investor-owned utility serving one million people throughout NJ. Coordinated the activities of a decentralized operations staff of 440 to provide reliable water service, ensure environmental compliance, control costs, manage and maintain system assets, reduce liability, provide site security and maintain a safe work place, and meet financial objectives. Responsible for the maintenance and operation of all source of supply, treatment, filtration, and storage facilities, producing and distributing between 100 MGD and 220 MGD, as well as over 4,000 miles of water transmission and distribution facilities.
- Directed a team of engineering, legal, public relations and financial professionals that planned, designed, permitted, and constructed a \$192,000,000 water treatment plant and pipeline system for New Jersey-American Water Company. The intake, constructed in environmentally sensitive areas, and the state-of-the-art water filtration plant can be expanded to produce 100 MGD. The project is the principal source of surface water for nearly one million people in southern New Jersey and it was built to allow new regulatory controls on ground water use to go into effect. The project was completed within budget and on schedule.
- Developed the financial model and contract language that allowed water lines to be extended to over 3,000 homes with contaminated private wells in Atlantic County, New Jersey. This program provided the financial assurances needed to construct several miles of water mains, eliminate federal tax liability, and reduce costs by 34%.

ACCOMPLISHMENTS (CONTINUED)

- Initiated and directed the first study of desalination for public water supply purposes in NJ for the City of Cape May. This project evaluated two desalination technologies and demonstrated that reverse osmosis could be used effectively to treat brackish water at a competitive cost. A full-scale plant has since been placed in service.
- Developed long-range regional water supply plan for Monmouth County, New Jersey, a county that was adding as many as 1,000 water utility customers per year and seriously stressing the water supply. The plan evaluated alternative sources of water, conservation, and regional reservoir development. The recommendations avoided \$30,000,000 in capital construction while ensuring a safe supply of water for a 15-year planning period. Negotiated supply sharing operating agreements with the New Jersey Water Supply Authority to implement the plan.
- Directed a staff of engineers and consultants in preparing comprehensive plans for 60 water systems located throughout the United States. Communities served by these systems include Pittsburgh, Pennsylvania and its surrounding suburbs; Charleston, West Virginia; Richmond, Indiana; E. Saint Louis, Illinois; and Monterey, California. Evaluated alternatives and identified the least costly means of providing safe water service for each system. Assessed operations strategies to identify external threats to the reliability and efficiency of these systems. Identified specific capital facility needs and operations strategies for five, ten and fifteen-year planning horizons, defined the long-term role of each system in prompting regional water supply development, and assessed the impact of future State and Federal water quality regulations on system operations and needs.
- Developed a formula for allocating ground water to 30 water suppliers in southern New Jersey for the New Jersey Department of Environmental Protection and negotiated an implementation agreement with effected suppliers. The New Jersey Legislature adopted the formula in the Water Supply Management Act Amendments of 1992. The allocation formula protects a regional aquifer from over-pumping.
- Developed a plan to convey storm water through a sixty-foot high railroad embankment in Prince Georges County, Maryland. Evaluated alternative methods and selected one that allowed an existing culvert to be modified to carry higher flow rates. Saved over \$500,000 in construction costs. The Washington Suburban Sanitary Commission and Prince Georges County adopted the design as a standard in their storm water design manual.
- Negotiated Lakewood, New Jersey's first three-year water and wastewater labor agreement in the face of an impending strike, departing from prior history of year-to-year contract agreements.
- Provided expert testimony in judicial proceedings involving utility rate adjustments before the New Jersey Board of Public Utilities, the Connecticut Department of Public Utility Control and the New York Public Service Commission. Testified on environmental and operations topics including rate setting strategies, source of supply improvements, water resources management, treatment to mitigate contamination,

ACCOMPLISHMENTS (CONTINUED)

staffing levels and operating practices. Testified as to the least costly means of operating and maintaining water and wastewater facilities.

- Served as a gubernatorial appointee to the New Jersey Water Supply Advisory Council under Governors Florio and Whitman. Advised the NJ Department of Environmental Protection on a variety of water resources management issues.
- Coordinated the response to an outbreak of giardiasis for the US Environmental Protection Agency. The outbreak affected 20% of the people served by a municipal water system in north-central Pennsylvania. Specified immediate control measures, short-term treatment techniques, and long-term treatment improvements to resolve the immediate problem and prevent a recurrence.

AWARDS

John J. Gallen Memorial Award presented by the Villanova University College of Engineering (1988) in recognition of many significant achievements in the field of water supply and distribution, effective leadership in developing regional water supply systems and contributions in the development of comprehensive plans for water supply systems.

George Warren Fuller Award presented by the American Water Works Association (2013) for distinguished service to the water supply field in commemoration of the sound engineering skill, brilliant diplomatic talent and constructive leadership which characterized the life of George Warren Fuller.

REPRESENTATIVE CLIENTS

- A.C. Schultes, Inc.
- Aquarion Water Company of Connecticut
- Aquarion Water Company of Massachusetts
- Atlantic City Municipal Utilities Authority
- Bethlehem Water Authority
- BOC Gases
- Bucks County Water & Sewer Authority
- Camco Management
- Cedar Grove Township
- Consumers New Jersey Water Company
- Delaware Public Advocate
- Delaware Public Service Commission
- D. R. Horton – New Jersey
- Elmira Water Board
- Erie City Water Authority
- Greater Ouachita Water Company

ACCOMPLISHMENTS (CONTINUED)

- Harris Defense Group
- Jersey City Municipal Utilities Authority
- Lower Makefield Township
- New Jersey-American Water Company
- New Jersey Division of Rate Counsel
- New Jersey Water Supply Authority
- New York City Department of Environmental Protection
- North Penn Water Authority
- North Wales Water Authority
- Passaic Valley Water Commission
- Pequannock River Basin Regional Sewerage Authority
- Perkasio Borough
- Perkasio Borough Authority
- Pricewaterhouse Coopers, LLP
- Southeast Morris County Municipal Utilities Authority
- Sussex Shores Water Company
- Township of Sparta (NJ)
- U.S. Water, LLC
- Upper Dublin Township
- Village of Ridgewood (NJ)
- Williams Alaska Resource

PROFESSIONAL QUALIFICATIONS

Registered Professional Engineer in Delaware (2004), Maryland (1982), New Jersey (1984), New Mexico (1987), New York (1984) and Pennsylvania (1983).

Licensed to complete RAM-WSM vulnerability assessments (2002).

PROFESSIONAL ASSOCIATIONS

American Society of Civil Engineers, American Water Works Association (Trustee of New Jersey Section), American Water Resource Management Association, International Water Association, National Ground Water Association, National Fire Protection Association, Water Environment Federation, Tau Beta Pi.

PROFESSIONAL HISTORY

HOWARD J. WOODS, JR. & ASSOCIATES, LLC	2000 - Present
General Manager	
AMERICAN WATER WORKS COMPANY	1983 - 2000
American Water Services, Inc.	
Senior Vice President - Operations	1999 - 2000
American Anglian Environmental Tech., L.P.	
Senior Vice President - Business Development	1998 - 1999

ACCOMPLISHMENTS (CONTINUED)

American Water Works Service Co. Vice President - Special Projects	1997 - 1998
New Jersey-American Water Co., Inc. Vice President - Operations	1989 - 1997
American Water Works Service Co. Engineering Manager	1988 - 1989
System Director of Planning	1986 - 1988
Division Manager of Operations	1984 - 1986
Division Director of Engineering	1983 - 1984
JOHNSON, MIRMIRAN & THOMPSON Project Engineer	1981 - 1983
U.S. ENVIRONMENTAL PROTECTION AGENCY Environmental Engineer	1977 - 1981

CONTACT INFORMATION

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Howard J. Woods, Jr. & Associates, L.L.C.
49 Overhill Road, East Brunswick, NJ 08816-4211
Phone: 267-254-5667
E-mail: howard@howardwoods.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017951 (water)
	:		C-2020-3019348
v.	:		C-2020-3019305
	:		
Pittsburgh Water and Sewer Authority - Water	:		
	:		
Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017970 (wastewater)
	:		C-2020-3019349
v.	:		C-2020-3019302
	:		
Pittsburgh Water and Sewer Authority - Wastewater	:		
	:		
Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to Authorize the Pay-As-You-Go Method of Financing	:	Docket Nos.	P-2020-3019019
	:		
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**TESTIMONY AND EXHIBITS OF THE
CITY OF PITTSBURGH**

City of Pittsburgh Statement No. 1	Direct Testimony, Daniel Gilman Ex. DG-1 1995 Cooperation Agreement Ex. DG-2 1995 Capital Lease Agreement
City of Pittsburgh Statement No. 2	Direct Testimony, Howard Woods, Jr., PE

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

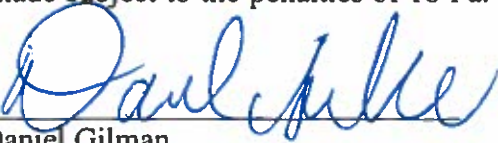
Pennsylvania Public Utility Commission : Docket Nos. R-2020-3017951 (water)
: C-2020-3019348
v. : C-2020-3019305
:
Pittsburgh Water and Sewer Authority - :
Water :

Pennsylvania Public Utility Commission : Docket Nos. R-2020-3017970 (wastewater)
: C-2020-3019349
v. : C-2020-3019302
:
Pittsburgh Water and Sewer Authority - :
Wastewater :

Petition of The Pittsburgh Water and : Docket Nos. P-2020-3019019
Sewer Authority for Waiver of Provisions :
of Act 11 to Increase the DSIC CAP, to :
Permit Levelization of DSIC Charges, and :
to Authorize the Pay-As-You-Go Method :
of Financing :

**VERIFICATION STATEMENT OF DANIEL GILMAN,
CHIEF OF STAFF TO MAYOR WILLIAM PEDUTO
ON BEHALF OF THE CITY OF PITTSBURGH**

I, Daniel Gilman, on behalf of the City of Pittsburgh, hereby verify that the documents preliminarily identified as The City of Pittsburgh's Statement No. 1, The City of Pittsburgh Exhibit DG-1 and The City of Pittsburgh Exhibit DG-2 were prepared by me or under my direct supervision and control. Furthermore, the facts contained therein are true and correct to the best of my knowledge, information and belief and I expect to be able to prove the same at an Evidentiary Hearing in this matter. This Verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Daniel Gilman
Chief of Staff to the Honorable Bill Peduto
Mayor of the City of Pittsburgh

DATED: September 21, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

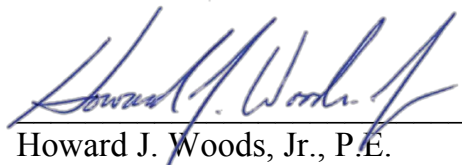
Pennsylvania Public Utility Commission, <i>et al.</i>	:	R-2020-3017951
	:	C-2020-3019348
v.	:	C-2020-3019305
	:	
Pittsburgh Water and Sewer Authority - Water	:	

Pennsylvania Public Utility Commission, <i>et al.</i>	:	R-2020-3017970
	:	C-2020-3019349
	:	C-2020-3019302
v.	:	
	:	
Pittsburgh Water and Sewer Authority - Wastewater:	:	

Petition of Pittsburgh Water and Sewer Authority	:	P-2020-3019019
For Waiver of Provisions of Act 11 to Increase	:	
The DSIC CAP, to Permit Levelization of DSIC	:	
Charges, and to Authorize the Pay-As-You-Go	:	
Method of Financing	:	

**VERIFICATION OF
HOWARD J. WOODS, JR., P.E. FOR THE
CITY OF PITTSBURGH**

I, Howard J. Woods, Jr., P.E., on behalf of the City of Pittsburgh, hereby verify that the documents preliminarily identified as City of Pittsburgh Statement No. 2 was prepared by me or under my direct supervision and control. Furthermore, the facts contained therein are true and correct to the best of my knowledge, information and belief and I expect to be able to prove the same at an Evidentiary Hearing in this matter. This Verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Howard J. Woods, Jr., P.E.
Consultant for the
City of Pittsburgh

Dated: September 21, 2020



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August 27, 2020

VIA ELECTRONIC FILING

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

Re: Pennsylvania Public Utility Commission v. Pittsburgh Water and Sewer Authority
– Water; Docket Nos. R-2020-3017951, et al.

Pennsylvania Public Utility Commission v. Pittsburgh Water and Sewer Authority
– Wastewater; Docket Nos. R-2020-3017970, et al.

Petition of The Pittsburgh Water and Sewer Authority for Waiver of Provisions of
Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges, and to
Authorize the Pay-As-You-Go Method of Financing; Docket No. P-2020-3019019

**STIPULATION RECOGNIZING IMPACT OF ACT 70 UPON PWSA'S
MUNICIPAL RATE PROPOSAL**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Stipulation Recognizing Impact of Act 70 Upon PWSA's Municipal Rate Proposal in the above-referenced matter. In addition to the parties who signed the Stipulation, both the Office of Small Business Advocate and Pittsburgh United have indicated their non-opposition to the Stipulation. Copies have been served in accordance with the attached Certificate of Service.

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
August 27, 2020
Page 2

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

/s/ Thomas J. Sniscak

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for The City of Pittsburgh

TJS/das
Enclosures

cc: Honorable Mary D. Long (malong@pa.gov)
Honorable Emily I. DeVoe (edevoe@pa.gov)
Yvonne S. Hilton, City Solicitor (yvonne.hilton@pittsburghpa.gov)
John F. Doherty, Associate City Solicitor (john.doherty@pittsburghpa.gov)
Lawrence H. Baumiller, Assistant City Solicitor (lawrence.baumiller@pittsburghpa.gov)
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the persons listed below in accordance with the requirements of § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL ONLY

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Erin K. Fure, Esq.
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Daniel Clearfield, Esq.
Karen O. Moury, Esq.
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dodell@eckertseamans.com
dclearfield@eckertseamans.com

/s/ Thomas J. Sniscak

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder

DATED: August 27, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2020-3017951 (water)
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	:		
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Stipulation Recognizing Impact of Act 70 Upon PWSA’s Municipal Rate Proposal

NOW COME the Stipulating Parties (“Stipulating Parties”) to the above-captioned proceedings seeking to conserve the time and resources of all parties to the proceeding, the Presiding Administrative Law Judges, and the Commission, and hereby stipulate as follows and request that the following be made part of the record:

1. During the pendency of these rate proceedings legislation was passed that governs the rates to be charged by the Pittsburgh Water & Sewer Authority (PWSA) to the City of Pittsburgh (City).
2. Specifically, on July 23, 2020, Governor Wolf signed Act 70, which, among other things, provides that the 2019 Cooperation Agreement between PWSA and the City has “the force

and effect of law” until January 1, 2025, unless PWSA and the City mutually agree to an earlier termination date. Section 2802-G. Also, Act 70 provides that the 2019 Cooperation Agreement shall “supersede, during the term of the cooperation agreement, any provision of 66 Pa.C.S. Pt. I, a commission regulation, policy statement, order and regulatory proceeding as they pertain to issues covered by the cooperation agreement, including the authority's rates, terms and conditions of service rendered to the city and the respective rights and duties between the authority and the city.” Section 2803-G. Act 70 is attached as Appendix A.

3. During the pendency of this proceeding and due to Commission Orders in a different proceeding issued before Act 70 became law, PWSA submitted supplemental testimony that revised the original position contained in its direct testimony submitted on March 6, 2020 by proposing to establish a Municipal rate in these rate proceedings for the first time on May 15, 2020.
4. On July 21, 2020, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate submitted their direct testimony in response to PWSA’s direct and supplemental testimony, and proposed adjustments or a different Municipal rate. At the time that these parties submitted their direct testimony, PWSA’s Municipal rate proposal was operative and not contravened by Act 70.
5. Based on the foregoing legislative provision as cited in paragraph 2 above, an unopposed petition for leave to withdraw PWSA’s proceeding for approval of the Cooperation Agreement under 66 Pa. C.S. § 507 was filed by PWSA. That petition is pending decision before the Administrative Law Judges.

6. Due to Act 70, PWSA has withdrawn or will withdraw its Supplemental testimony and associated exhibits or schedules establishing a Municipal rate for the City.
7. Due to Act 70 the Stipulated Parties agree that each is withdrawing any proposed Municipal Rate and withdraws any such recommendation or evidence in support of any recommended Municipal Rate in the above-captioned rate dockets. Withdrawal of such recommendation or evidence may be performed by any one of the four methods described in paragraph 8.
8. The Stipulating Parties shall indicate and identify, before entering any pre-submitted testimony and exhibits into the record, which portions of their pre-submitted testimony and exhibits are withdrawn. The Stipulated Parties may do so through (i) strike-through; (ii) a separate sheet identifying what pages, lines or sections or portions of exhibits are withdrawn; (iii) by clean copy; (iv) or by surrebuttal testimony. The Stipulating Parties may adjust any schedule that would change solely due to the withdrawal of a Municipal rate proposed or adjustment thereto. The Parties also agree that they will withdraw any adjustments in the rate case that assumes payments or remittances that are inconsistent with the Cooperation Agreement.
9. Stipulating Parties agree if a party withdraws its Municipal rate recommendation through surrebuttal testimony, the withdrawing party need not specifically identify each and every page, line or sections or portions of exhibits of its prior testimony related to the Municipal rate recommendation that should be considered withdrawn. However, the withdrawing party agrees it will make best efforts to refer to its prior testimony with sufficient specificity to leave no uncertainty its Municipal rate recommendation has been withdrawn.

10. If a party withdraws its recommendation regarding a Municipal rate through surrebuttal testimony, the Stipulating Parties agree they will not seek to prevent entry into the record of any testimony that the withdrawing party submitted prior to surrebuttal testimony related to the Municipal rate to the extent the recommendation contained in such prior testimony related to the Municipal rate has been withdrawn through surrebuttal testimony.
11. This Stipulation is without admission or prejudice in any other part of these rate proceedings and in any future rate proceeding.
12. The Stipulating Parties request that this stipulation be approved and made part of the record.
13. This Stipulation may be executed in counterparts, which shall together constitute one and the same stipulation agreement.

Stipulating parties:

For the City of Pittsburgh:	<u>Thomas J. Sniacak</u>	Date: 8/21/20
For the Pittsburgh Water & Sewer Authority:	_____	Date:
For the Bureau of Investigation & Enforcement:	_____	Date:
For the Office of Consumer Advocate:	_____	Date:
For the Office of Small Business Advocate:	_____	Date:

10. If a party withdraws its recommendation regarding a Municipal rate through surrebuttal testimony, the Stipulating Parties agree they will not seek to prevent entry into the record of any testimony that the withdrawing party submitted prior to surrebuttal testimony related to the Municipal rate to the extent the recommendation contained in such prior testimony related to the Municipal rate has been withdrawn through surrebuttal testimony.
11. This Stipulation is without admission or prejudice in any other part of these rate proceedings and in any future rate proceeding.
12. The Stipulating Parties request that this stipulation be approved and made part of the record.
13. This Stipulation may be executed in counterparts, which shall together constitute one and the same stipulation agreement.

Stipulating parties:

For the City of Pittsburgh:

Date: 8/21/20

For the Pittsburgh Water & Sewer Authority:

Dann M. O'Neil

Date: 8/21/20

For the Bureau of Investigation & Enforcement:

Date:

For the Office of Consumer Advocate:

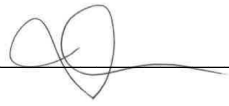
Date:

For the Office of Small Business Advocate:

Date:

10. If a party withdraws its recommendation regarding a Municipal rate through surrebuttal testimony, the Stipulating Parties agree they will not seek to prevent entry into the record of any testimony that the withdrawing party submitted prior to surrebuttal testimony related to the Municipal rate to the extent the recommendation contained in such prior testimony related to the Municipal rate has been withdrawn through surrebuttal testimony.
11. This Stipulation is without admission or prejudice in any other part of these rate proceedings and in any future rate proceeding.
12. The Stipulating Parties request that this stipulation be approved and made part of the record.
13. This Stipulation may be executed in counterparts, which shall together constitute one and the same stipulation agreement.

Stipulating parties:

For the City of Pittsburgh:	_____	Date:
For the Pittsburgh Water & Sewer Authority:	_____	Date:
For the Bureau of Investigation & Enforcement:	 _____	Date: 8/21/20
For the Office of Consumer Advocate:	_____	Date:
For the Office of Small Business Advocate:	_____	Date:

10. If a party withdraws its recommendation regarding a Municipal rate through surrebuttal testimony, the Stipulating Parties agree they will not seek to prevent entry into the record of any testimony that the withdrawing party submitted prior to surrebuttal testimony related to the Municipal rate to the extent the recommendation contained in such prior testimony related to the Municipal rate has been withdrawn through surrebuttal testimony.
11. This Stipulation is without admission or prejudice in any other part of these rate proceedings and in any future rate proceeding.
12. The Stipulating Parties request that this stipulation be approved and made part of the record.
13. This Stipulation may be executed in counterparts, which shall together constitute one and the same stipulation agreement.

Stipulating parties:

For the City of Pittsburgh:	<u>Thomas J. Sniatak</u>	Date: 8/21/20
For the Pittsburgh Water & Sewer Authority:	_____	Date:
For the Bureau of Investigation & Enforcement:	_____	Date:
For the Office of Consumer Advocate:	<u>Christine Maloni Hoover</u>	Date: 8/21/20
For the Office of Small Business Advocate:	_____	Date:

Party-by- Party Compliance With Paragraph 8

**Status Report for Each Party's Plan for Complying With Paragraph 8 of the
Stipulation Recognizing Impact of Act 70 Upon PWSA's Municipal Rate Proposal**

The Pittsburgh Water and Sewer Authority

On September 17, 2020, PWSA withdrew the proposals set forth in its Supplemental Direct Testimony addressing issues governed by the Cooperation Agreement and reverted to its initial proposals as set forth in its March 6, 2020 initial filing. To effectuate the withdrawal of its revised positions regarding City Cooperation issues, PWSA redacted the relevant portions of its Supplemental Direct Testimony and served copies of the revised Supplemental Direct Testimony, as indicated below.

Witness	St. No.	Redacted Version?
Robert A. Weimar	St. No. 1-SD As Revised due to passage of Act 70	Yes
Debbie M. Lestitian	St. No. 2-SD As Revised due to passage of Act 70	Yes
Jennifer Presutti	St. No. 3-SD As Revised due to passage of Act 70	Yes
Barry King, P.E.	St. No. 4-SD	No
Edward Barca	St. No. 5-SD	No
Thomas F. Huestis	St. No. 6-SD	No
Harold J. Smith	St. No. 7-SD As Revised due to passage of Act 70	Yes
Julie Quigley	St. No. 8-SD As Revised due to passage of Act 70	Yes
Beth Dutton	St. No. 9-SD	No

PWSA is not proposing any changes to its subsequently served written testimony (rebuttal and rejoinder) as a result of Act 70.

Bureau of Investigation and Enforcement

Pursuant to Paragraph 8(iv) of the Stipulation, I&E has elected the option of addressing the portions of its pre-submitted testimony and exhibits that are withdrawn by way of surrebuttal testimony. Specifically, in their respective pieces of surrebuttal testimony, I&E witnesses Spadaccio, Cline, and Kubas reflected updates of their positions to account for passage of Act 70. In addition, these witnesses testified substantively as to the withdrawal of any positions in direct testimony that conflicted with the subsequently-passed Act 70. I&E notes that witness Patel's testimonies were not impacted by Act 70. Finally, I&E notes that it negotiated with all Stipulating Parties to ensure that its method of addressing Act 70 would be a mutually acceptable way to reflect the imposition of Act 70 upon its case.

Office of Consumer Advocate

OCA determined that no action by OCA is necessary to comply with Paragraph 8 of the Stipulation Recognizing Impact of Act 70 Upon PWSA's Municipal Rate Proposal.

Office of Small Business Advocate

The OSBA intends to withdraw Exhibit BK-1 in OSBA Statement No. 1.

City of Pittsburgh

The City of Pittsburgh intends to withdraw the following testimony from The City of Pittsburgh's Statement. No. 2 (Direct Testimony of Howard J. Woods, Jr., P.E.):

Page: line numbers

9:16 – 10:3 including footnote 3

10:5-12

17:4-10

19:18-22

22:14-24:13 including footnote 10

Pittsburgh UNITED

Pittsburgh UNITED is not a party to the Stipulation regarding to Act 70 and is not making any revisions to its previously served testimony pursuant to the Stipulation or as a result of revisions made by the other parties due to the Stipulation.