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October 7, 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

**CITY OF PITTSBURGH'S STATEMENT IN SUPPORT OF THE JOINT  
PETITION FOR SETTLEMENT**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the City of Pittsburgh's Statement in Support of Joint Petition for Settlement in the above-captioned proceeding. Copies have been served in accordance with the attached Certificate of Service.

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
October 7, 2020  
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Should you have any questions or comments, please feel free to contact me directly.

Very truly yours,



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

KJM/das  
Enclosures

cc: Honorable Mary D. Long (via email [malong@pa.gov](mailto:malong@pa.gov))  
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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**

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

DATED: October 7, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, <i>et. al.</i>	:	Docket Nos.	R-2020-3017951
	:		C-2020-3019348
	:		C-2020-3019305
v.	:		C-2020-3020747
	:		C-2020-3021067

Pittsburgh Water and Sewer Authority - Water

Pennsylvania Public Utility Commission, <i>et. al.</i>	:	Docket Nos.	R-2020-3017970
	:		C-2020-3019348
v.	:		C-2020-3019302
	:		C-2020-3020538
Pittsburgh Water and Sewer Authority - Wastewater	:		C-2020-3021065

Petition of 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
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**THE CITY OF PITTSBURGH'S  
STATEMENT IN SUPPORT OF THE JOINT PETITION FOR SETTLEMENT**

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The City of Pittsburgh (City) hereby submits its Statement in Support of the Joint Petition for Settlement (Settlement or Joint Petition) in the above-captioned proceedings.

**I. INTRODUCTION AND OVERALL REASONS IN SUPPORT OF SETTLEMENT**

The City supports the Settlement. The City's primary objective in intervening in and participating in these proceedings was to advocate for an outcome that adopts, or most closely reflects, the rates and service relationship, terms and conditions between the City and Pittsburgh

Water and Sewer Authority (PWSA) that the City and PWSA negotiated in their 2019 Cooperation Agreement. While these proceedings were pending, Act 70 of 2020 was enacted,<sup>1</sup> which among other things provides that the 2019 Cooperation Agreement between the City and PWSA has “the force and effect of law” until January 1, 2025, unless PWSA and the City mutually agree to an earlier termination date. The Settlement is consistent with Act 70. The City believes that the 2019 Cooperation Agreement, and thus the Settlement, provides the optimal outcome for the City, PWSA, and City residents who are customers of PWSA. Just as the Cooperation Agreement seeks to achieve an equitable balancing of interests between the City and PWSA for the benefit of City residents who also are PWSA ratepayers, the City submits that the overall Settlement achieves a similar equitable balancing of the interests of the respective parties and their constituencies in light of the facts and circumstances of this case. The City urges approval of the Settlement as filed.

*Relationship Between the City and PWSA; Background of 2019 Cooperation Agreement*

The City has been responsible for providing water and sewer service to its residents for well over a century, and still owns the water and sewer system that PWSA currently leases from the City. Over the many years before the City established PWSA in 1984, the City built a system of pumping stations, reservoirs, pretreatment plants, filtration plants, and distribution mains to provide water to City residents, to municipally owned buildings, and City instrumentalities, such as the Pittsburgh Zoo. In the 1880s, the City began constructing a municipal sewer system, which collected sewage throughout the City.<sup>2</sup> In 1984, the City created PWSA, under the Municipality Authorities Act of 1945, primarily to oversee a capital improvement program to refurbish the water system’s infrastructure. The City and PWSA entered into a 1984 Lease and Management

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<sup>1</sup> 71 P.S. §§ 720.211 to 720.213.

<sup>2</sup> City of Pittsburgh Statement No. 1 (Direct Testimony of Daniel Gilman, Chief of Staff to the Honorable Bill Peduto, Mayor of the City of Pittsburgh) at 6:10-17.

Agreement in which the City leased to PWSA the City's existing water and sewer systems, transferred financial responsibility for operating and maintaining the systems to PWSA, and established the City as agent for PWSA to continue providing all services needed to operate the water and sewer systems, with PWSA reimbursing the City for all expenses actually incurred and expended by the City.<sup>3</sup>

In 1995, the City and PWSA modified this arrangement, replacing the 1984 Lease and Management Agreement with a Cooperation Agreement (the 1995 Cooperation Agreement) and the concurrent 1995 Capital Lease Agreement. Together, the 1995 agreements ended the agency relationship in which City employees were responsible for day-to-day operations of the facilities and transferred operational control of the water and sewer systems to PWSA. Most of the City employees then responsible for day-to-day operations of the facilities became PWSA employees. The 1995 agreements created an arrangement in which PWSA paid the City a front-end loaded rental fee of \$96,017,249.60 for the 30 year lease of the water and sewer systems and granted PWSA an option to acquire the system assets for \$1.00 at the end of the lease. The concurrent Cooperation Agreement, which had a longer term of 40 years, granted the City the right to receive up to 600,000,000 gallons of water each year until 2035 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 allowed reimbursements for any remaining "actual direct expenses" the City incurred on behalf of PWSA. In exchange, PWSA received possession of the water and sewer systems and related facilities and the ability to utilize existing City infrastructure and manpower to procure necessary services the City was already geared up to provide to itself, such as specified engineering, communications, vehicle maintenance, legal, information, and financial services, on a fee for services basis, so as to avoid PWSA's less efficient

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<sup>3</sup> Id. at 6:18-7:2.

procurement of those services either in-house or from third parties.<sup>4</sup> The commitment to provide the City with up to 600,000,000 gallons of water annually free of charge for the City's use in the 1995 Cooperation Agreement was an integral part of the 1995 deal; without the 1995 Cooperation Agreement there would have been no 1995 Capital Lease Agreement that will effect the transfer of the City's water and sewer assets to PWSA in 2025.<sup>5</sup>

With the 2017 legislation that subjected PWSA to Commission regulation, and the lead service line remediation and other infrastructure improvement challenges PWSA faces, the City recognized that its relationship with PWSA would need to evolve, the 1995 Cooperation Agreement would need to be renegotiated, and the City would need to begin to pay a reasonable rate for water usage at City-owned and affiliated properties and take other steps to assure that the future relationship between the City and PWSA will be more arm's length than in the past. The 2019 Cooperation Agreement fairly implements that result. On the issue of the water allotment, the 2019 Cooperation Agreement terminated the 600,000,000 free allotment on January 1, 2020. In addition, the 2019 Cooperation Agreement requires metering of all City properties, and immediately imposes a payment obligation on the City, while mitigating the impact of the full expense by phasing in responsibility over a 4 year period (20%/40%/60%/80%/100%) so that by the fifth year, 2024, the City will pay 100% of the usage charges PWSA is permitted to impose on similar commercial customers. A similar phase-in approach was agreed for the City's responsibility for the operation, maintenance, repair, and replacement of the water and sewer service laterals; similar to other commercial customers, the City will pay 100% of those charges by 2025.<sup>6</sup> The 2019 Cooperation Agreement thus represents difficult concessions both the City and PWSA made; it creates a workable framework for moving forward towards a workable

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<sup>4</sup> Id. at 7:3-21.

<sup>5</sup> Id. at 9:3-10:12.

<sup>6</sup> Id. at 10:15-11:8.

separation between the City and PWSA in the manner the legislature sought in the 2017 legislation.<sup>7</sup>

*The 2019 Cooperation Agreement Adheres to Principles of Gradualism*

Gradualism is a critical principle of rate making that attempts to balance the potential adverse effects of large and dramatic changes in rates with the need to set rates that recover the revenue requirement from the classes of customers who cause the cost. In *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1015 (Pa. Cmwlth. 2006) (*Lloyd*), “rate shock” is a phrase used to describe the public outcry associated with rate increases, while “gradualism” is the concept that rates should be gradually increased over longer periods of time to prevent customers from experiencing rate shock.<sup>8</sup> The phase-in provisions of the 2019 Cooperation Agreement embody the gradualism principle. The City and PWSA negotiated a definitive schedule that will move the City from a point of receiving free service to paying a full cost rate in only five years. The steps are graduated and designed to mitigate the rate shock on the City that would otherwise occur if the full Commercial rates were to be applied at once as a result of the ongoing rate proceeding.<sup>9</sup> A flash cut to full rates would have imposed an immense economic burden on the City that would have required it to make painful cuts in City services to the most vulnerable populations.<sup>10</sup>

*The 2019 Cooperation Agreement is Just and Reasonable*

2019 Cooperation Agreement produces a just and reasonable balance of a number of competing needs in a way that expeditiously moves PWSA to full compliance with the Public Utility Code.<sup>11</sup> It creates neither an unreasonable preference nor unreasonable discrimination given

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<sup>7</sup> Id. at 16:9-13.

<sup>8</sup> City of Pittsburgh Statement No. 2 (Direct Testimony of Howard J. Woods, Jr. PE) at 20:18-21:2.

<sup>9</sup> Id. at 22:8-12.

<sup>10</sup> City of Pittsburgh Statement No. 1 at 15:5-10.

<sup>11</sup> City of Pittsburgh Statement No. 2 at 25:14-26:7.



the history of the City and PWSA's relationship and the harmful consequences that would flow from a precipitous jump in rates for the City. It also recognizes a continuing need for the City and PWSA to cooperate in many respects that will continue after the phase-in and purchase occurs in 2025. Capital improvements undertaken by each entity will impact the assets of the other, so coordination of these activities is well advised and could be jeopardized absent the 2019 Cooperation Agreement. The sanitary sewer collection network in the City includes combined storm/sanitary sewers, so proper maintenance of City streets is an essential element of CSO control and compliance. In addition, the PWSA has responsibilities for storm water management and the activities associated with this role will impact compliance with the MS4 Permit on which the City and PWSA are co-permittees. With regard to operations, for the foreseeable future, PWSA employees will continue to benefit from being part of the City's pension and benefits programs. Both entities will benefit from a shared approach to vehicle maintenance and operations (e.g., fuel purchases)<sup>12</sup>. These are all good things the parties negotiated long and hard to achieve in the 2019 Cooperation Agreement and that will survive because of Act 70.

## **II. REASONS FOR SUPPORT OF SPECIFIC ISSUES**

### **A. Revenue Requirements (Rates, DSIC, Multi-Year Rate Plan)**

The City supports but is not commenting separately on this aspect of the settlement.

### **B. Stormwater Tariff and Compliance Plan Stage 2 Proceeding**

The City supports but is not commenting separately on this aspect of the settlement.

### **C. Cost Allocation and Rate Design Issues**

The City supports the cost allocation and rate design results achieved by the Settlement for all of the reasons explained in Section I of this Statement. The Settlement is consistent with Act 70's dictate that the 2019 Cooperation Agreement between the City and PWSA has "the force and effect of law" until January 1, 2025, unless PWSA and the City mutually agree to an earlier

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<sup>12</sup> Id.

termination date. The Settlement implements commercial rates for the City that reference Act 70 and thereby incorporate the agreed-upon rate phase-ins and other rate and service-related negotiated terms embodied in the 2019 Cooperation Agreement. *See* Settlement Ex. G (PWSA Water Tariff) and Ex. H (PWSA Wastewater Tariff) (each referencing Act 70 of 2020, 71 P.S. §§ 720.211 to 720.213).

During the pendency of this proceeding and due to Commission Orders in an earlier PWSA proceeding issued before Act 70 became law, PWSA submitted supplemental testimony in these proceedings regarding the establishment of a Municipal rate. As a result of Act 70 the parties that addressed municipal rate issues in testimony stipulated to withdraw that testimony. Joint Hearing Ex. No. 1 is a copy of that Stipulation and a party-by-party summary of the manner in which each party complied with the commitment to withdraw that testimony.

**D. Additional COVID-19 Relief Measures**

The City supports but is not commenting separately on this aspect of the settlement.

**E. COVID-19 Related Costs and Relief Funding**

The City supports but is not commenting separately on this aspect of the settlement.

**F. Low Income Customer Assistance Issues**

The City supports but is not commenting separately on this aspect of the settlement.

**G. Customer Service Issues**

The City supports but is not commenting separately on this aspect of the settlement.

**H. Quality of Service Issues**

The City supports but is not commenting separately on this aspect of the settlement.

**I. Additional Terms and Conditions**

The City supports but is not commenting separately on this aspect of the settlement.

### III. CONCLUSION

The City believes that the 2019 Cooperation Agreement, and thus the Settlement, provides the optimal outcome for the City, PWSA, and City residents who are customers of PWSA. Just as the Cooperation Agreement seeks to achieve an equitable balancing of interests between the City and PWSA for the benefit of City residents who also are PWSA ratepayers, the City submits that the overall Settlement achieves a similar equitable balancing of the interests of the respective parties and their constituencies.

The City urges approval of the Settlement in full as filed.

Respectfully submitted,



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Dated: October 7, 2020