

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held January 18, 2018

Commissioners Present:

Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
Norman J. Kennard, Commissioner
David W. Sweet, Commissioner
John F. Coleman, Jr., Commissioner

Implementation of Chapter 32 of the
Public Utility Code Re Pittsburgh Water
And Sewer Authority

M-2018-2640802 (water)

M-2018-2640803 (wastewater)

TENTATIVE IMPLEMENTATION ORDER

BY THE COMMISSION:

On December 21, 2017, Governor Wolf signed Act 65 of 2017 into law whereby the Pennsylvania Public Utility Code was amended to add new language to 66 Pa. C.S. § 1301 and to add a new Chapter 32 consisting of Sections 3201 through 3209. Section 2 of the Act provides a new Chapter 32 addressing Commission jurisdiction over the provision of utility water, wastewater, and stormwater service by entities created by Pennsylvania cities of the second class under the Municipal Authorities Act. 66 Pa. C.S. §§ 3201-3209. Chapter 32 also establishes regulatory deadlines for entities subject to it. Section 3 repeals all other inconsistent Acts in whole or part, and Section 4 directs that

the Act take immediate effect.¹ As Pennsylvania has only one city of the second class, Pittsburgh, under this legislation, the Commission will have jurisdiction over the Pittsburgh Water and Sewer Authority (PWSA).

This Tentative Implementation Order proposes methods by which the Commission and affected entities may carry out the tariff approval, ratemaking, compliance plan, and assessment provisions of Chapter 32. The Commission invites interested parties to provide comment on these tentative proposals and interpretations and to offer additional recommendations worth consideration.

BACKGROUND

Commission jurisdiction over municipal utilities providing service outside their political boundaries has existed since the earliest days of utility regulation in Pennsylvania. Various municipal entities are included in the statutory definition of municipal corporations under Section 102 of the Public Utility Code. That section defines municipal corporation as:

All cities, boroughs, towns, townships, or counties of this Commonwealth, and also any public corporation, authority, or body whatsoever created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.

66 Pa. C.S. § 102. Section 1301 of the Public Utility Code establishes Commission jurisdiction over the rates charged by municipal corporations when those entities provide public utility service outside their corporate limits. 66 Pa. C.S. § 1301. Section 1501 of the Public Utility Code provides for Commission jurisdiction over the quality, reliability,

¹ Section 1 of Act 65 amended 66 Pa. C.S. § 1301 to direct the Commission to use an imputed capital structure to calculate the weighted cost of capital in Commission rate proceedings involving municipal corporations serving beyond corporate limits. The calculation of an appropriate imputed capital structure is a fact-intensive inquiry used to ensure fair, reasonable, and stable rates. Generalizations are unhelpful in such cases. Because of this, the Commission will refrain from speculating as to how imputed capital structures will be examined in future rate litigation, reserving such matters to each individual case.

and adequacy of service of those entities under like terms. 66 Pa. C.S. § 1501. The Public Utility Code contains other references and requirements that relate to municipal corporations that offer service beyond corporate boundaries. *See e.g.*, 66 Pa. C.S. §§ 502, 507, 508, 1102(a)(5), 1304.

However, approximately 70 years ago, municipal authorities were removed from Commission jurisdiction by the Municipal Authorities Act (MAA):

Any person questioning the reasonableness or uniformity of a rate fixed by an authority or the adequacy, safety and reasonableness of the authority's services, including extensions thereof, may bring suit against the authority in the court of common pleas of the county where the project is located or, if the project is located in more than one county, in the court of common pleas of the county where the principal office of the project is located. The court of common pleas shall have exclusive jurisdiction to determine questions involving rates or service.

53 Pa. C.S. § 5607(d)(9) (*emphasis added*). Thus, the Commission had no authority whatsoever over entities created and operating under the MAA. The statutory amendments of Act 65 granting Commission jurisdiction over certain municipal authorities are necessary because the Pennsylvania Supreme Court had determined that the MAA provided the exclusive means to address the reasonableness of municipal authority rates and service. *Calabrese v. Collier Twp. Mun. Auth.*, 430 Pa. 289, 240 A.2d 544, 548 (1968); *Elizabeth Twp. v. Mun. Auth. of McKeesport*, 498 Pa. 476, 447 A.2d 245, 246 (1982); *Graver v. Pa. Pub. Util. Com.*, 469 A.2d 1154, 1157 (Pa. Cmwlth. Ct. 1984).

Chapter 32 establishes a transition plan whereby the rates and service of utility water, sewer, or stormwater authorities created by Pennsylvania cities of the second class will become subject to Commission jurisdiction. Chapter 32 of Act 65 further refines Pennsylvania's regulatory approach to public utility service. These refinements, where applicable, will work to enable the municipal authority subject to Act 65 to better

accommodate replacement and improvement of aging infrastructure and to meet increasingly stringent environmental compliance requirements. The Commission seeks stakeholder participation through comments to this Tentative Implementation Order to assist it in its effort to provide the affected authority with an orderly transition to regulation under the Public Utility Code.

DISCUSSION

Chapter 32 establishes a process whereby PWSA will transition from local rate and service regulation under the MAA to the uniform rate setting and service requirements of the Public Utility Code. Outwardly, PWSA will function much like other public utilities regulated by the Commission. However, Chapter 32 retains important aspects of the MAA that will affect authority operations. Most notably, Chapter 32 retains access to municipal financing vehicles and the covenants on which those vehicles depend. In short, Chapter 32 works to preserve municipal access to low-cost capital for public utility services while at the same time providing for the uniform rate and service considerations available exclusively through the Commission. These will be discussed in turn below.

66 Pa. C. S. § 3201 – Definitions

Chapter 32 carefully defines which authorities will transition to Commission oversight:

"Authority." A body politic or corporate established by a city of the second class, except a joint authority established by a city of the second class and a county of the second class, under 53 Pa.C.S. Ch. 56 (relating to municipal authorities), under the former act of June 28, 1935 (P.L.463, No.191), known as the Municipality Authorities Act of one thousand nine hundred and thirty-five, or under the former act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, which owns or operates equipment or facilities for any of the following purposes:

- (1) Diverting, developing, pumping, impounding, distributing or furnishing water to customers for compensation.
- (2) Wastewater collection, conveyance, treatment or disposal to customers for compensation.
- (3) Storm water collection, conveyance, treatment and disposal.

66 Pa. C.S. § 3201. At present, the only authority to which Chapter 32 would apply is the Pittsburgh Water and Sewer Authority.

Section 3201 encompasses the listed services of water, wastewater and stormwater. The Commission does not consider water and wastewater service offered by one utility as a joint service offering requiring only one tariff. To this extent, the Commission will initially require **two separate tariffs** for PWSA service, one for water and another for wastewater, and will treat PWSA offerings as separate utilities subject to the exemptions of 66 Pa. C.S. § 1311(c). Upon reviewing the comments received in response to this Order, the Commission will evaluate whether a third tariff for PWSA for stormwater service will also be required. As is noted above, the Docket Number for the PWSA water service tariff filing is M-2018-2640802 and the PWSA water service utility code is 2220224. The Docket Number for the PWSA wastewater service tariff filing is M-2018-2640803 and the PWSA wastewater service utility code is 2320555. Again, based on the comments received in response to this Order, the Commission will evaluate whether a third Docket Number and utility code will be created for PWSA stormwater service.

In addition, Section 3201 provides that qualifying entities providing stormwater service are authorities subject to Commission jurisdiction under Section 3202. The Commission notes that this grant of authority over certain stormwater systems is unique. By definition, stand-alone stormwater systems are not public utility service pursuant to 66 Pa. C.S. §102. However, given the statutory language in Section 3201, providing that stormwater service is subject to Commission jurisdiction under Section 3202, the

Commission proposes to establish PWSA stormwater service as a tariff-based utility service subject to the Public Utility Code and Commission regulation. Commentators supporting regulated stormwater service should discuss whether, as to PWSA, Act 65 effectively repealed the jurisdictional exclusion of stormwater collected in a separate storm sewer system. Commentators should also point to relevant examples that may be used as a regulatory template and provide legal reasoning on why regulating PWSA stormwater operations separately is appropriate. Commentators opposing Commission jurisdiction over PWSA stormwater service should identify in detail how the Commission should segregate stormwater operations from jurisdictional property, operations, and rates.

66 Pa. C.S. § 3202 – Application of Provisions of Title

Section 3202 provides a date certain on which PWSA will become subject to Commission jurisdiction: Sunday, April 1, 2018. Section 3202 also provides for certain exceptions that apply to both PWSA and the Commission.

- (a) Application. -- The following apply:
 - (1) Beginning on April 1, 2018, unless otherwise provided in this chapter, the provisions of this title, except Chapters 11 (relating to certificates of public convenience) and 21 (relating to relations with affiliated interests), shall apply to an authority in the same manner as a public utility.
 - (2) Notwithstanding paragraph (1), section 1103 shall apply to an authority that seeks to acquire, construct or begin to operate any equipment, plant or other facility for the rendering of service beyond the areas served as of the effective date of this section.
- (b) Exception. -- Upon request of an authority, the commission may suspend or waive the applicability of any provision of this title to the authority, except for this section.

66 Pa. C.S. § 3202. The Commission notes that, while Section 3202 provides that PWSA shall be subject to the Public Utility Code (like any certificated utility), PWSA need not apply for a Certificate of Public Convenience save for certain acquisitions or expansions. To the extent that Chapter 32 does not require PWSA to obtain a Certificate of Public Convenience, it likewise would not require PWSA to meet the requirements of 52 Pa. Code § 3.501 save for an acquisition or expansion. This Section also authorizes the Commission to waive, upon petition by PWSA, any provision of the Public Utility Code except for Section 3202. This regulatory relief is exclusive to water, wastewater, and stormwater entities subject to Chapter 32 and does not extend to other regulated water or wastewater operators.

66 Pa C.S. § 3203 – Prior Tariffs

While PWSA will unquestionably be subject to the requirements of the Public Utility Code as of April 1, 2018, Chapter 32 provides that PWSA will continue to provide service to its customers under its existing rates and terms of service until those are modified by the Commission through the tariff review process outlined in 66 Pa. C.S. § 3204, discussed below. That is, Section 3203 effectively approves the existing PWSA rates and rules under the Public Utility Code as a temporary measure until the Commission reviews and approves the mandated PWSA tariff filings of Section 3204. Section 3203 provides:

- (a) Service. -- An authority shall continue to provide service to the authority's customers in accordance with a prior tariff until the effective date of a commission's order approving a new tariff. If the effective date of a commission's order approving a new tariff has been stayed by a court of competent jurisdiction, the prior tariff shall remain in effect until the stay has been dissolved.
- (b) Disputes or conflicts. -- In accordance with section 3208 (relating to power of authority), the commission shall resolve all disputes or conflicts arising under a prior tariff.

- (c) Definition. -- As used in this section, the term "prior tariff" shall mean the tariff, rate schedule and riders incorporated into the tariff, including the terms and conditions or other documents setting forth the rates and terms and conditions of service provided by an authority on the date the commission assumes jurisdiction over the authority.

66 Pa. C.S. § 3203.

This section provides that PWSA prior tariff rates and terms will have the force and effect of law as of April 1, 2018. That Prior Tariff will continue in effect until modifications are approved by the Commission. The PWSA Prior Tariff rates and terms are available at the PWSA website.²

The Commission interprets Section 3203(c) to require PWSA customers to contact PWSA per Chapter 3 of its Prior Tariff to resolve billing complaints at least until April 1, 2018. This includes application to the Exoneration Hearing Board appeal process addressed in Chapter 3 of the PWSA Rules.

However, the Commission does not interpret this Section as a statutory *carte blanche* to violate the Public Utility Code or Commission regulations. As to disputes and conflicts arising under that Prior Tariff, those parts of the Prior Tariff that conflict with the Public Utility Code, or are silent as to matter addressed by the Public Utility Code or Commission regulation, shall not be subject to strict enforcement by the Commission after April 1, 2018. Rather, cases arising under various applications of the Prior Tariff will be subject to the same reasonableness analysis applied to all utility tariffs under the Public Utility Code.

² <http://www.pgh2o.com/rules>

In practical terms, beginning Monday, April 2, 2018, the Commission will entertain informal and formal complaints from PWSA customers as it would any other regulated utility. For PWSA, this will mark the end of its current Exoneration Hearing Board as an adjudicative body. While the Commission acknowledges that PWSA is free to develop complaint escalation procedures that suit its customer's needs, the Commission believes the Exoneration Hearing Board procedures are incompatible with the due process rights afforded to utility consumers by the Public Utility Code. Cases pending before the Exoneration Hearing Board on April 1, 2018, shall be decided by PWSA using PWSA Prior Tariff procedures. As to all customer complaints, beginning April 1, 2018, PWSA shall advise its customers of the right to seek review of any PWSA complaint determination with the Commission's Bureau of Consumer Services or through the process of submitting a formal complaint to the Commission.

Also beginning April 2, 2018, PWSA will determine whether a customer dispute exists based upon Commission regulations. Commission regulations provide:

Dispute—A grievance of an applicant, customer or occupant about a public utility's application of a provision covered by this chapter, including, but not limited to, subjects such as credit determinations, deposit requirements, the accuracy of meter readings or bill amounts or the proper party to be charged. If, at the conclusion of an initial contact or, when applicable, a follow-up response, the applicant, customer or occupant indicates satisfaction with the resulting resolution or explanation of the subject of the grievance, the contact will not be considered a dispute.

52 Pa. Code § 56.2. Therefore, when PWSA makes the required query of whether its response is satisfactory, and the customer indicates dissatisfaction with the PWSA response, a dispute exists and PWSA is expected to comply with Commission regulatory requirements when investigating the customer dispute as described below.

During the period between April 1, 2018, and Commission approval of a new PWSA tariff, the Commission will apply the PWSA Prior Tariff to resolve informal and

formal disputes submitted to it. However, the Commission will employ its regulations to do so. For example, like other utilities subject to the Public Utility Code, PWSA is expected to abide by the requirements of 52 Pa. Code §§ 56.140 – 56.181 when responding to customer complaints filed directly with PWSA and through the filing of informal complaints with the Commission.

The Commission points out that PWSA shall comply with 52 Pa. Code §§ 56.151 - 152 when it receives a complaint directly from a customer. This includes, but is not limited to, not issuing a termination notice based on the disputed subject matter, investigating the dispute using reasonable methods, making a diligent attempt at entering a payment arrangement, providing the customer with information necessary to make an informed judgment about the dispute and issuing a report to the customer within 30 days of the initiation of the dispute.

When responding to an informal complaint filed with the Commission, PWSA will comply with the provisions found at Pa. Code 52 §§ 56.161 – 166. These include, but are not limited to, prohibitions on the termination of service when the basis of that termination is the subject of a pending dispute and the review techniques found at 52 Pa Code § 56.163(1). Initially, in order to facilitate and expedite case handling, PWSA shall provide the Commission’s Bureau of Consumer Services (BCS) with direct access to its customer services information system until it can provide access to relevant portions of its system in a manner like other similarly situated jurisdictional utilities

Similarly, the Commission’s procedural regulations at 52 Pa. Code Chapters 1, 3, and 5 will apply to resolve formal complaints filed against PWSA. While PWSA may choose to resolve complaints consistent with its Prior Tariff, once a customer seeks assistance from the Commission, PWSA shall participate in the formal complaint process before the Commission in accordance with the Commission’s procedural rules as a party on equal footing with its complaining customer. In other words, when a consumer

complaint is filed pursuant to Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, PWSA will be required to file a timely answer, participate in hearings before a presiding Administrative Law Judge, file briefs and otherwise comply with the procedural requirements set forth in the Commission's regulations.

A consequence of the overlap of Commission procedural jurisdiction and the temporary statutory approval of the Prior Tariff is that, even after the Commission approves a new PWSA tariff, the Commission will undoubtedly encounter informal and formal complaints that address situations that arose under the Prior Tariff. Commentators should address the situation whereby the Prior Tariff was controlling at the time of events, but no longer does so, and where the application of the Public Utility Code, Commission Regulations, or precedent may produce results that would conflict with the Prior Tariff. To the extent the Prior Tariff is silent as to substance or procedure, commentators should discuss how the Commission might employ existing law to resolve disputes.

A significant part of Commission interaction with utility customers involves customers who are under threat of service termination and contact the Commission to request a payment arrangement to avoid termination. Beginning April 2, 2018, the Commission will entertain requests for payment arrangements and resolve those requests consistent with Chapter 14 of the Public Utility Code and Commission regulations. For those customers subject to termination, PWSA will begin following the Commission's termination procedures found at 52 Pa. Code §§ 56.81 – 56.131 as a regulated utility as of April 1, 2018. This includes stay of termination while the case is under investigation by the Bureau of Consumer Services (BCS) and while formal appeals from BCS are pending.

66 Pa C.S. § 3204 – Tariff Filing and Compliance Plan

Section 3204 establishes the regulatory timing of the initial PWSA tariff filing and compliance plan. While Chapter 32 provides a date certain of April 1, 2018, for Commission jurisdiction, the date for the start of the 90-day period within which PWSA is to file a tariff for Commission review is less clear. Section 3204(a) provides:

- (a) Filing. -- An authority shall file a tariff and supporting data with the commission within 90 days of the effective date of this section. The commission shall conduct a rate proceeding in accordance with the commission's procedures for tariff filings. To the extent practical, public hearings on the tariff filing shall be held within the boundaries of an authority.

66 Pa. C.S. § 3204(a). The Commission has authority to enforce Section 3204 as of April 1, 2018.

Timing of Filings Required by Section 3204

Act 65 is ambiguous as to exactly when the required tariff and compliance plan filings are to occur. Section 2 of Act 65 creates the new Chapter 32 whereby affected authorities are directed by 66 Pa. C.S. § 3204(a) to file tariffs within 90 days, and by 66 Pa. C.S. § 3204(b) to file compliance plans within 180 days “of the effective date of this section.” Also as part of Section 2 of Act 65, 66 Pa. C.S. § 3202 confers jurisdiction to the Commission on April 1, 2018. However, Section 4 of Act 65 directs that “this act” take immediate effect. The Commission understands that this language has caused concern among stakeholders. Specifically, affected entities are concerned about when the various regulatory obligations of Section 2 of Act 65 take effect.

Given these ambiguities, this Tentative Implementation Order will clarify how the Commission will implement the operative sections of Chapter 32.³ First, the Commission concludes that its jurisdiction over qualifying authorities is to commence as of April 1, 2018, and that the requirements of Chapter 32, which are dependent on Commission jurisdiction, likewise commence as of April 1, 2018. Although the Act is effective immediately (i.e., December 21, 2017), the Act also specifies that Section 2 is to take effect April 1, 2018.

This interpretation has legal and practical justifications. Legally, the specific date of Section 2 (April 1, 2018) controls the general date of Section 4 (December 21, 2017). Next, the substantive portions of Act 65 are broken into two sections that accommodate the interpretation adopted by the Commission. While the Act 65 takes effect immediately, Section 2, which both confers jurisdiction on the Commission and sets forth the time lines for PWSA's tariff and compliance filings, does not commence until April 1, 2018. Finally, because Act 65 is ambiguous on this point, the Commission may exercise its discretion and expertise to reflect a reasonable interpretation for the timing requirements of Chapter 32.

On the other hand, interpreting Section 2 as having an effective date of December 21, 2017 would be unreasonable and impractical because 66 Pa. C.S. § 3204 would then require a tariff filing on March 22, 2018, and a compliance plan on June 20, 2018. The Commission acknowledges that, even if such an interpretation were permissible, it would create legal issues for all stakeholders. First, it would mandate a tariff filing before the Commission had clear jurisdiction to accept the filing or conduct a rate proceeding. Likewise, such an interpretation would put the participation of the statutory advocates pursuant to Section 3206 under a cloud until at least April 1, 2018. Adopting April 1,

³ Act 65 is relatively straight-forward regarding amendments to 66 Pa. C.S. § 1301. These amendments have no qualifying dates or compliance periods. Therefore, the Commission interprets Section 4 of Act 65 to give the new 66 Pa. C.S. § 1301 immediate effect.

2018, as date on which the 90 and 180-day filing periods begin to run avoids such these and related issues.

The greatest practical concern of an earlier effective date is that it would force PWSA to develop compliant tariffs with all supporting materials within what is arguably an unrealistic timeline. Practically speaking, MAA-governed authorities have no reason to develop the types of accounting, financial, or operational documentation required to comply with the rate and service regulations of the Public Utility Code. Chapter 32, however, expects that PWSA will present these materials in a form sufficient not only to support its proposed tariffs but also to withstand meaningful adversarial review in a rate proceeding. Unreasonable or otherwise extreme deadlines do not serve any participant in this process, least of all the ratepayers that are ultimately dependent on that process to ensure safe and adequate service at just and reasonable rates.

The Commission will therefore enforce Chapter 32 under the principle that its legislative intent is remedial and meant to achieve long-term viability and sustainability in accordance with the Public Utility Code. This may explain the later effective date of Section 2. Well-prepared tariffs, complete with supporting data and testimony, will permit stakeholders and the Commission to perform the type of top-to-bottom review intended by the General Assembly and typical of the Commission's procedures for tariff filings. To allow for the orderly process demanded by those procedures, the Commission interprets the effective date of 66 Pa. C.S. Chapter 32 to be **April 1, 2018**. That effective date would require PWSA to make its tariff filings no later than **Monday, July 2, 2018**.

Commentators are invited to discuss whether this approach is reasonable, or in the alternative, to suggest other filing dates with supporting legal justification and discussion of the practicality of any alternative proposal.

Tariff Filings Under 66 Pa. C.S. § 3204(a)

Chapter 32 directs that the Commission conduct a rate proceeding employing typical rate case procedures to review the PWSA proposed tariffs. Those procedures provide for a minimum review period of 60 days and maximum of 270 days under 66 Pa. C.S. § 1308. To comply with the requirements, PWSA shall file its initial tariffs, one for water service and one for wastewater service, using the model tariff forms available on the Commission website.⁴ In addition, the Commission's regulations at 52 Pa. Code §§ 53.1 - 53.103 shall govern the filing of the proposed tariffs and future tariff supplements.⁵ Given that this will be the first PWSA tariff filings, the Commission directs attention to the requirement of adequate public notice of the tariff filings found at 52 Pa. Code § 53.45, *Notice of new tariffs and tariff changes*.

The Commission notes that the current form of the six chapters of PWSA rules found at <http://pgh2o.com/rules> may not comply with Commission tariff requirements without modification. For example, approved tariffs contain a table of contents, a description of service areas, definitions, rules and regulations, and water conservation contingency plans. As to the substance of the proposed tariff, the Commission notes that the model water and wastewater tariff provided on the Commission website contain standard language that PWSA should consider adopting in its proposed tariffs. For example, Commission regulations govern bill collection and late payment fees and the model tariffs reflect these regulations.

In the past, the Commission has employed various ratemaking methodologies to develop just and reasonable rates for rate-regulated public utilities. The rate base/rate of return ratemaking method is the most common method employed by large investor-

⁴ Relevant forms for water and wastewater companies may be found online at http://www.puc.state.pa.us/filing_resources/water_online_forms.aspx .

⁵ <https://www.pacode.com/secure/data/052/chapter53/chap53toc.html>

owned-utilities. However, the cashflow ratemaking method is an alternative utilized by Philadelphia Gas Works (PGW). The Commission submits that utilization of a method similar to PGW's cashflow ratemaking method should be considered for PWSA. As a municipal fixed utility transferring under the jurisdiction of Commission, PWSA finds itself in a similar situation as PGW. Further, municipalities often account for investment and depreciation in manners differing than those of regulated investor-owned-utilities, with a primary focus on debt service coverage sufficient to meet bond obligations. The reconciliation of a cashflow revenue requirement and ratemaking methodology with PWSA's future requirements for long term infrastructure improvement plans and the application of appropriate distribution system improvement charge mechanisms is further addressed in this Tentative Order.⁶

The Commission's review of the financial information currently available from PWSA appears to indicate that a method similar to PGW's cash flow methodology along with similar ratemaking procedures and considerations as detailed in 52 Pa. Code § 69.2703, would be best suited for PWSA's accounting practices and circumstances, as they are roughly analogous to those of PGW in the early 2000's. A method similar to PGW's cash flow method is likely most appropriate for PWSA to gauge compliance with its bond covenants. As such, the Commission seeks comment on which ratemaking method is best suited to PWSA and how PWSA might implement the recommended method in its July 2, 2018, tariff filing.

The proposed July 2, 2018 tariff filing date should provide PWSA with adequate time to prepare appropriate tariffs along with supporting documentation and narrative testimony. To reiterate, at a minimum, PWSA provides two distinct utility services – water and wastewater. **Each service offered by PWSA shall have its own tariff and shall be subject to rate review on an independent basis subject to petition for a**

⁶ See *infra* at 19-24.

combined revenue requirement under 66 Pa. C.S. § 1311(c). The water and wastewater tariff filings should be broken out by volumes, which shall include, but are not limited to, the following:

I. Filing Requirements

- a. Index of Volumes
- b. Statement of Reasons for Requested Rate Relief
- c. Satisfaction of all Filing Requirements Enumerated at 52 Pa. Code § 53.1 *et seq.*

II. Narrative Testimony with Exhibits

- a. General Rate Increase Request Justification
- b. Financial Conditions Justifying Request
- c. PWSA Financial Performance in Markets for Municipal Financing
- d. Historical Financial Performance
- e. Class Cost of Service Study
- f. Test Year Sales and Revenue Allocation and Proposed Customer Charges
- g. System Reliability and Safety
- h. Customer Service, Metering, and Billing
- i. Efficiencies and Cost Savings
- j. Universal Service
- k. Conservation Programs
- l. Proposed Tariff Changes

III. Class Cost of Service Study Exhibits

- a. Summary of Allocation Results
- b. Summary of Allocation Results by Functional Classification
- c. Allocation Results
- d. Classification Results
- e. Functionalization Results
- f. Summary of Factors
- g. Functionalization Factor Values
- h. Classification Factor Values
- i. Allocation Factor Values
- j. Development of Allocation Factors
- k. Computation of Proposed Charges

IV. Proposed Tariff

- a. Proposed Tariff in Model Tariff Form With References to Prior Tariff
- b. Proposed Tariff
- c. Prior Tariff

The narrative testimony will provide PWSA with the opportunity to explain in detail why the proposed revenues are required, how it proposes to use its requested revenues to address issues of concern identified by PWSA, and how it will engage in future investment. In addition, as previously discussed herein, the Commission requests comment on its proposal for PWSA to segregate stormwater-specific property from its other regulated assets for purposes of the water and wastewater rate proceedings. Commenters should specifically address whether a similar segregation mechanism to that set forth in 66 Pa. C.S. § 1311(c) (concerning segregation of water and wastewater assets) would be appropriate to apply to the segregation of PWSA's stormwater specific assets.

Compliance Plan Filing Under 66 Pa. C.S. § 3204(b)

For the reasons explained above, Subsection 3204(b) requires PWSA to file a compliance plan within 180 days of the April 1, 2018 effective date of Section 3204. The PWSA compliance plan shall be filed no later than Friday, **September 28, 2018**.

In that compliance plan, PWSA will propose plans to achieve full regulatory compliance in matters not addressed in its Section 3204(a) tariff filing. Subsections 3204(b) and (c) work in tandem, the former directing the filing of the compliance plan and the latter Commission review of the plan. Those sections provide:

- (b) Compliance plan. -- Within 180 days of the effective date of this section, an authority shall file a compliance plan with the commission which shall include provisions to bring an authority's existing information technology, accounting, billing, collection and other operating systems and procedures into compliance with the requirements applicable to jurisdictional water and wastewater utilities

under this title and applicable rules, regulations and orders of the commission. The compliance plan shall also include a long-term infrastructure improvement plan in accordance with Subchapter B of Chapter 13 (relating to distribution systems).

- (c) Commission review. -- The commission shall review the compliance plan filed by an authority under subsection (b) and may order the authority to file a new or revised compliance plan if the compliance plan fails to adequately ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service.

66 Pa. C.S. § 3204(b) and (c).

The Commission requests that interested parties provide comment on whether, as a part of its compliance plan, PWSA should adopt a system of accounts in accordance with 52 Pa. Code § 65.16(a). Similarly, the Commission requests comment on how PWSA may comply with the required Self-Certification Form for Security Planning and Readiness that all regulated utilities must file with the Commission. Commentators are invited to present and discuss these, and other issues believed important to the PWSA compliance plan, including whether and how the Commission might examine non-compliance with the Public Utility Code and its regulations pending review of the PWSA compliance plan. In this regard, the Commission requests comment on compliance matters involving meter installation at all service locations, replacement, and testing in both the near term and in the PWSA compliance plan. In addition, comments are sought on whether PWSA's plans for compliance with Chapter 56 regarding billing, collection and termination procedures should be addressed in the tariff filing or in the subsequent compliance plan.

While Section 3204(b) provides PWSA with up to six months to develop and file its proposed compliance plan, including a long-term infrastructure improvement plan (LTIIP), statutory deadlines do not establish a mandatory date for a Commission order approving, denying, or modifying that plan as necessary. However, our Final

Implementation Order regarding Act 11 of 2012⁷ established a 120-day deadline for the Commission to review LTIPs.⁸ Therefore, the Commission consideration period for the LTIP portion of the compliance plan shall be 120 days unless otherwise amended by the Commission. While the Commission will move at all due speed in its review, stakeholders should be aware of the timing differences between the PWSA compliance plan and tariff filing.

Regarding the LTIP, the Commission expects that PWSA will provide detail on how it intends to replace or upgrade targeted eligible property and how that activity will improve reliability and safety. The LTIP should include any metrics that PWSA uses to track and evaluate the effectiveness of infrastructure improvements, e.g., lost or unaccounted for water, main breaks, or non-revenue water. PWSA should also provide detail on how the programs and property eligible for LTIP consideration were determined and targeted, e.g., a risk-based approach, age, material type, lost or unaccounted for water, non-revenue water, regulatory directive, or audit findings.

In its LTIP Implementation Order, the Commission explained that it would examine the types and age of eligible property based on tables provided by a utility describing the types of eligible property to be replaced or upgraded and the vintage of that property. The Commission expects that the format of these tables will be consistent throughout the LTIP plan submission.

PWSA will also provide a schedule for eligible property repair and replacement by class and category for each year the LTIP will remain in effect. Because the PWSA service territory is contiguous, PWSA should consider identifying the location of the

⁷ Act 11 of 2012, inter alia, amended Title 66 of the Pennsylvania Consolidated Statutes, the Public Utility Code (Code) to allow jurisdictional water and wastewater utilities to petition the Commission for approval to implement a Distribution System Improvement Charge (DSIC).

⁸ See *Implementation of Act 11 of 2012, Final Implementation Order*, Docket No. M-2012-2293611 (Order entered August 2, 2012).

eligible property by either street, neighborhood, or district. For example, PWSA may indicate that it will replace 1,500 feet of cast iron main in Squirrel Hill, and 500 service lines in the Strip District, etc. So identifying the quantity of property to be improved each year of the LTIP, for each class or category of eligible property along with a total for each category, will satisfy the information required.

PWSA shall also project its annual capital expenses to ensure that the LTIP is cost effective. This would include providing tables detailing estimated expenses broken out by class or category of eligible property for each year the LTIP is to remain in effect and providing a total for each class or category. A complete cost effectiveness demonstration would, as applicable, describe:

- i. the competitive bidding process or other means of choosing contractors;
- ii. how contractors are evaluated in terms of work quality, safety and cost effectiveness;
- iii. how much LTIP work will be performed by contractors and/or competitively bid and the process for determining what projects are done by contractors;
- iv. how materials are economically procured and vendors are chosen;
- v. the salvage and scrapping process/program

The LTIP will also show how PWSA will accelerate the replacement of aging infrastructure and how repair, improvement or replacement will maintain safe and reliable service. To make this demonstration PWSA will provide:

- i. a schedule for eligible property repair and replacement by class and category for each year the LTIP will remain in effect (as above), and for each of the previous 5 years (or more if desired) to provide context as to how the LTIP accelerates, or maintains acceleration, of infrastructure improvement;

- ii. if used by PWSA, a baseline program and an accelerated program (DSIC projects above and beyond the baseline) as a table detailing the information on the baseline quantities of infrastructure improved and the associated expenditures for each the previous 5 years (or more if desired) and the same information for each of the LTIIIP years.

As to personnel, PWSA will provide a description of its workforce management and training program as follows:

- i. how the LTIIIP project workforce is certified and trained, including how contractors are onboarded and evaluated;
- ii. how certification and training of the workforce is maintained through the course of the LTIIIP

Finally, the LTIIIP must include a description of any PWSA outreach and coordination with other utilities, PennDOT, and local governments on planned maintenance or construction projects.

In addition to the LTIIIP, the Commission will request that PWSA provide it with an Annual Asset Optimization Plan (AAOP). Although not required by statute or regulation, the Commission will request the information contained in an AAOP as data requests pursuant to Chapter 5 of the Public Utility Code if an AAOP is not provided to it. The AAOP includes associated expenditure information for completed LTIIIP work for the reporting year and the projected year. AAOP data is broken out by individual projects completed in the reporting year – including general location and the infrastructure replaced/repared, and provide the same information for the work in the projected year. And, as is discussed above, the Commission requests comment on how PWSA may segregate stormwater-specific property from its other regulated assets for LTIIIP purposes.

66 Pa. C.S. § 3205 – Maintenance, Repair and Replacement of Facilities and Equipment

Section 3205(a) reiterates Commission authority under Section 1501 of the Public Utility Code. Section 3205(b) provides authorization for PWSA to petition the Commission to establish a distribution system improvement charge (DSIC).

- (a) Authorization. -- The commission may require an authority to maintain, repair and replace facilities and equipment used to provide services under this chapter to ensure that the equipment and facilities comply with section 1501 (relating to character of service and facilities).
- (b) Petition. -- An authority may petition the commission for the establishment of a distribution system improvement charge. An authority which establishes a distribution system improvement charge shall comply with all applicable requirements of Subchapter B of Chapter 13 (relating to distribution systems).

66 Pa. C.S. § 3205.

The Commission notes that the PWSA Prior Tariff Rule No. 302.1 provides that PWSA is to charge a 7% DSIC effective January 1, 2011, applied as a flat surcharge to PWSA bills. The Commission understands that PWSA does not currently collect a DSIC surcharge from its customers. Should PWSA seek to reinstate its DSIC after April 1, 2018, Section 3205(b) requires PWSA to petition for approval of a DSIC that is fully compliant with 66 Pa C.S. §§ 1350 – 1360. To be eligible to recover costs through a DSIC, a utility must have submitted an LTIIP. 66 Pa. C.S. § 1352(a).

As well, to be eligible to recover costs through a DSIC, a utility must certify that it has filed a base rate case within five years prior to the date of filing the DSIC petition, or, must file a base rate case in order to be eligible for a DSIC. 66 Pa. C.S. §§ 1353 (4), (5). The Commission seeks comments on whether or not the filing of the required tariff, pursuant to § 3204, satisfies this requirement.

In addition, the Commission seeks comment on how it might reconcile the language of the new Section 3205 with the existing Section 1357(a)(3), which specifies that DSIC recovery shall be based on the fixed costs of eligible property, i.e., depreciation and pretax return. The Commission notes that city natural gas distribution operations utilize a different mechanism to recover DSIC costs under Section 1357(c) of the Public Utility Code. Given that PWSA has no such express exemption, commenters should identify how PWSA might implement a DSIC if it chooses a rate making methodology that does not utilize depreciation and pretax return.

The Commission also seeks comment on the future structure and submission of PWSA's LTIP and DSIC mechanism filings. Should PWSA have the ability to file a unified LTIP but with the best possible segregation of its water, wastewater, and stormwater infrastructure improvement activities and operations? Similarly, should the future application of DSIC mechanisms follow to the best extent possible the distinct segments of PWSA's operations and related eligible property?

While PWSA may submit a DSIC petition as a part of its ninety-day tariff filing, the statutory deadlines applicable to that tariff filing will not control the DSIC petition. PWSA may consider filing a DSIC petition contemporaneously with its LTIP in its required compliance plan.

66 Pa. C.S. § 3206 – Duties of Office of Consumer Advocate and Office of Small Business Advocate

Section 3206(a) requires the Office of Consumer Advocate (OCA) to participate in all matters relating to an authority before the Commission on behalf of consumers. Section 3206(b) directs the Office of Small Business Advocate (OSBA) to engage in similar representation on behalf of small business customers. Section 3206 provides:

- (a) Office of Consumer Advocate. -- The Office of Consumer Advocate shall represent the interests of consumers as a party, or otherwise

participate for the purpose of representing the interests of consumers, in any matter properly before the commission relating to an authority.

- (b) Office of Small Business Advocate. -- The Office of Small Business Advocate shall represent the interests of consumers as a party, or otherwise participate for the purpose of representing the interests of small business consumers, in any matter properly before the commission relating to an authority.
- (c) Authorization. -- In addition to any other powers conferred upon the Office of Consumer Advocate or Office of Small Business Advocate, the Office of Consumer Advocate or Office of Small Business Advocate may represent an interest of consumers presented to it for consideration, in writing, by a substantial number of individuals who make, direct, use or are the recipients of a product or service provided by an authority.

66 Pa. C.S. § 3206. In addition, Section 3206(c) confers statutory standing on the OCA and OSBA to engage in the discretionary representation of their respective interest groups in all matters concerning an authority subject to Chapter 32.

While not specifically mentioned in Chapter 32, the Commission points out that the Commission's Bureau of Investigation and Enforcement (BI&E) has discretion to participate as an independent party in all matters properly before the Commission. To that end, the Commission reminds PWSA of its legal obligation to provide official service of information on BI&E, OCA, and OSBA as appropriate and required.

66 Pa. C.S. § 3207 – Commission Assessment

Section 3207 provides for three matters relating to PWSA intrastate gross operating revenue and Commission assessments. First, Section 3207(a) establishes that, within 30 days of the effective date of Chapter 32, PWSA is to identify its gross intrastate revenue and communicate that information to the Commission.

- (a) Sworn statement. -- In order to allow the commission to carry out the commission's duties under this chapter, the president Chairperson, Vice Chairperson or Executive Director of an authority shall file, within 30 days of the effective date of this section and on or before March 31 of each year thereafter, a sworn statement which specifies the authority's gross intrastate revenues for the immediately preceding calendar year in the same manner as required under section 510(b) (relating to assessment for regulatory expenses upon public utilities).

66 Pa. C.S. § 3207(a).

To comply with this section, PWSA must submit to the Commission its 2017 calendar year total revenue collected for services rendered in 2017. PWSA must provide this information to the Commission on or before Tuesday, **May 1, 2018**. Thereafter, PWSA is to transmit its intrastate revenue information to the Commission annually subject to 66 Pa. C.S. § 510 as would any regulated public utility. Section 3207(b) reiterates the requirements of 66 Pa. C.S. § 510(b) such that the Commission will then impose an assessment on PWSA based on its proportionate share of the Commission's regulatory expenses and that PWSA will remit that amount to the Commission pursuant to 66 Pa. C.S. § 510(b):

- (b) Billing. -- The commission shall make an estimate based on the gross intrastate revenues specified under subsection (a) in accordance with the procedures set forth in section 510(b) and shall impose an assessment on an authority based on the authority's proportional share of the commission's expenses relating to the commission's utility group in accordance with section 510(b). An authority shall pay an assessment on an annual basis in accordance with section 510.

66 Pa. C.S. § 3207(b).

While assessment reporting is expressly identified in Chapter 32, the Commission reminds PWSA of its other ongoing reporting obligations. Among these is the timely filing of an annual financial report pursuant to the Commission's regulations at 52 Pa.

Code §§ 71.1-71.9.⁹ Also, the Commission points out the monthly and yearly customer reporting requirements mandated by 52 Pa. Code § 56.231. The Commission seeks comment on the development of an appropriate compliance schedule for these latter reports and whether such schedule should be compatible to what is already applicable for other regulated public utilities.

66 Pa. C.S. § 3208 – Power of Authority

Section 3208 places limits on the degree to which the Public Utility Code is to interact with authority conferred on PWSA under the MAA. For example, Section 3208(a) provides that cities of the second class retain the power to organize and create authorities. In accordance with Section 3202(a)(1), Section 3208(a) makes clear that cities of the second class need not seek Commission approval prior to creating new authorities. Section 3208 provides:

- (a) Power. -- Nothing in this chapter shall be construed to rescind or limit the power of a city of the second class to establish an authority or determine the powers and functions of an authority.
- (b) Audits. -- Nothing in this chapter shall be construed to limit or prevent a city official of a city of the second class from conducting audits and examinations of the financial affairs of an authority in accordance with the city official's duties.

66 Pa C.S. §§ 3208(a) and (b).

As to audits of PWSA, while Chapter 32 preserves the power of authorized local officials to inquire into PWSA financial affairs, that authority does not limit or substitute for Commission audits performed under the Public Utility Code and Commission regulations. Specifically, PWSA will be scheduled for management effectiveness and

⁹ Electronic templates are available at http://www.puc.state.pa.us/filing_resources/water_online_forms.aspx.

operational efficiency audits as a jurisdictional water and wastewater utility with plant in service in excess of \$10 million. These audits shall be conducted no less than once every eight years.

Similarly, any surcharges or adjustable rate mechanisms employed by PWSA would be subject to an annual audit and reconciliation under 66 Pa. C.S. § 1307(e) by the Commissions' Bureau of Audits. This would specifically include any DSIC revenue PWSA would seek to collect from its ratepayers.

The Commission seeks comment on whether it should establish a baseline performance analysis by directing its Bureau of Audits to conduct a review of PWSA financial operations, processes, and billing systems as an agreed upon procedures engagement. Similarly, the Commission seeks comment on whether the Bureau of Consumer Services should conduct an audit of PWSA customer service operations and consumer complaint handling process.

Most significant to Commission ratemaking authority are the limitations of Section 3208(c). That Section provides:

- (c) Securities of authority. -- Notwithstanding any provision in this title to the contrary:
 - (1) The commission shall permit an authority to impose, charge or collect rates or charges as necessary to permit the authority to comply with its covenants to the holders of any bonds or other financial obligations.
 - (2) The commission may not require an authority to take action or omit taking any action under this title if the action or omission would have the effect of causing the interest on tax-exempt bonds or other financial obligations issued by the authority to be includable in the gross income of the holders of the bonds or other financial obligations for Federal income tax purposes.

- (3) An authority may continue to issue bonds or other financial obligations on behalf of the authority under 53 Pa.C.S. Ch. 56 (relating to municipal authorities), and as otherwise provided by law.

66 Pa. C.S. § 3208(c).

While the exact level of rates and cash flow necessary to enable PWSA to comply with its bond covenants is as yet unknown, Section 3208 establishes a revenue floor that the Commission is obligated to respect. While commentators may explore this issue in response to this Tentative Order, the Commission expects that stakeholders will develop more useful argument and evidence in the tariff filing proceeding mandated by Section 3204. As to the protection Chapter 32 affords to existing and future bond holders, the Commission points out that Chapter 32 does not exempt PWSA from compliance with the requirements of Chapter 19 of the Public Utility Code addressing securities and obligations.

66 Pa. C.S. § 3209 – Proprietary Information of Authority

Section 3209 exempts certain PWSA information from public disclosure under the Pennsylvania Right-to-Know Law while preserving the Commission’s ability to examine that information pursuant to the Public Utility Code. Section 3209 provides:

Proprietary information, trade secrets and competitively sensitive information of an authority shall not be public records under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, and shall not be subject to mandatory public disclosure. Nothing in this chapter shall be construed to exempt an authority from providing information to the commission as specified under sections 501 (relating to general powers), 504 (relating to reports by public utilities), 505 (relating to duty to furnish information to commission; cooperation in valuing property) and 506 (relating to inspection of facilities and records) or any other provision of this title which requires information to be provided to the commission.

66 Pa. C.S. § 3209.

While this section provides for certain exemptions from the Right-to-Know Law, the requirements of the Public Utility Code nevertheless apply to PWSA. Specifically, PWSA is expected to comply with data requests directed to it from Commission staff and to comply with discovery requests properly served on PWSA under the Commission's procedural regulations.

CONCLUSION

This Tentative Implementation Order is the first official step taken by the Commission to provide for the orderly transition of regulation of the Pittsburgh Water and Sewer Authority from the Municipal Authorities Act to the Public Utility Code. In addition to proposing how PWSA may comply with the Public Utility Code, Commission Regulations, and applicable precedent, this Order seeks to gather input from affected stakeholders and members of the public on how PWSA might best achieve the regulatory transition mandated by Act 65 of 2017. Upon review of the comments provided to the Commission in response to this Order, the Commission will issue a final implementation order addressing any necessary changes to the direction provided here.

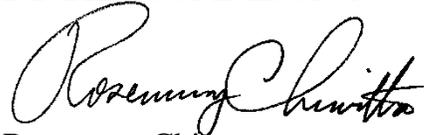
The contact persons for this proceeding are, Shaun A. Sparks, shsparks@pa.gov, Assistant Counsel in the Commission's Law Bureau, Sean Donnelly, sdonnelly@pa.gov, in the Water/Wastewater Section of the Commission's Bureau of Technical Utility Services, and James Farley, jafarley@pa.gov, in the Commission's Bureau of Consumer Services; **THEREFORE,**

IT IS ORDERED:

1. That procedures and guidelines for the implementation of Act 65 of 2017 are tentatively adopted, as set forth herein.
2. That any interested party may submit comments regarding this Tentative Implementation Order within twenty (20) days of entry of this Order.
3. That all comments, or other responses to this Tentative Implementation Order shall be filed with Commission's Secretary Bureau at Docket Nos. M-2018-2640802 and M-2018-2640803 by either e-filing through the Commission website e-filing system or written comments can be filed by overnight delivery, certified mail or priority mail to: Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA 17120.
4. That a copy of this Tentative Implementation Order posted on the Commission's website at www.puc.pa.gov.

5. That a copy of this Tentative Implementation Order be served on the Pittsburgh Water and Sewer Authority, all jurisdictional water and wastewater companies contiguous to the Pittsburgh Water and Sewer Authority, the National Association of Water Companies – Pennsylvania Chapter, the Pennsylvania Municipal Authorities Association, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 18, 2018

ORDER ENTERED: January 18, 2018