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PUC to Begin Exercising its Jurisdiction over the PWSA

Summary: The Pennsylvania Public Utility Commission (PUC) officially begins its oversight of the Pittsburgh Water and Sewer Authority (PWSA) on April 1st. This will be a monumental task. The PUC has moved quickly to get its arms around that task by approving a tentative implementation order specifying how it will carry out its duties and provides deadlines the PWSA must meet to accomplish the mandates specified by the Legislature.

On Dec. 21, 2017, Governor Wolf signed Act 65 of 2017 into law. The statute amends the Pennsylvania Public Utility Code to give the PUC regulatory jurisdiction over the PWSA with regard to the provision of utility water, wastewater and storm water service. The law also establishes regulatory deadlines for the PWSA. The law went into effect immediately upon the governor signing the legislation. Section 3202 of the amending legislation provides a date certain on which PWSA will become subject to commission jurisdiction: Sunday, April 1, 2018.

A December 2017 Allegheny Institute *Policy Brief (Vol. 17, No. 47)* summarized the myriad issues and problems facing the PWSA. An auditor general report concluded that, “the City [Pittsburgh] has over-extended authority regarding the PWSA,” and the PWSA was never intended to be a truly independent organization. Indeed, the city has maintained ownership and leases the infrastructure and equipment to the PWSA. In part, the PWSA was used to help the city with its financial problems.

Then, too, the PWSA has piled up enormous debts that reached \$750 million by the end of 2016. The massive debt has crippled the authority’s ability to spend on needed infrastructure replacement. Replacement is now estimated to cost upwards of \$5 billion.

It was these and other serious and unaddressed problems that prompted the Legislature to pass with overwhelming majorities the bill giving the PUC a major role in fixing the problems at the PWSA. On January 18th, the PUC approved a Tentative Implementation Order (TIO) in which it lays out how it intends to proceed with its regulation of the PWSA under the requirements spelled out in the law.

Under its regulatory authority regarding rate-setting, the TIO states, “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.” Moreover, the TIO says “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.”

The PUC expects the PWSA to submit a tariff filing by July 2, 2018. The PUC also would prefer the PWSA to utilize a method similar to the Philadelphia Gas Works’ cash flow ratemaking method as it is likely “most appropriate for PWSA to gauge compliance with its bond covenants.” In addition, the PWSA will within 180 days—by Sept. 28, 2018—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.”

A still larger part of the Legislature’s charge to the PUC, as it assumes regulatory control over the PWSA, is to see to it that the PWSA “develop and file its proposed compliance plan, including a long-term infrastructure improvement plan (LTIIP). This plan will also be submitted by Sept. 28, 2018. According to the TIO, the “LTIIP 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 LTIIP 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.”

The TIO explains that it will require the PWSA to include a schedule for eligible property repair and replacement by class and category for each year for the duration of the LTIIP. To carry out this effort the PWSA will “project its annual capital expenses including detailed estimates of expenses by category to ensure that the LTIIP is cost effective.”

In more detail the TIO lays out what it expects to see in in the PWSA’s LTIIP in terms of achieving cost effectiveness:

- 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 LTIIP 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 LTIIP will also show how PWSA will accelerate the replacement of aging infrastructure and how repair, improvement or replacement will maintain safe and reliable service.

In addition to the LTIIP, the PUC will request that PWSA provide it with an Annual Asset Optimization Plan (AAOP). “The AAOP includes associated expenditure information for

completed LTIP work for the reporting year and the projected year. AAOP data is broken out by individual projects completed in the reporting year.”

Obviously, a major overhaul of the PWSA’s infrastructure will be very expensive and revenues must increase to cover those expenses. The PUC addresses this by allowing the PWSA to “petition the commission for the establishment of a distribution system improvement charge (DSIC).”

The PUC says in the TIO that it understands that PWSA does not currently collect a DSIC surcharge. If PWSA wishes to reinstate its DSIC after April 1, 2018, the law will require PWSA to petition for approval of a DSIC that is fully compliant with statutory requirements. In order to recover costs through a DSIC, the PWSA must first submit a LTIP.

In sum, the PUC, following the requirements set out in the recently amended utilities law, will within the next year or so put the PWSA on a course of better day-to-day management and a long term plan of overhauling its old and rapidly deteriorating distribution systems. Further, it has the authority to grant the PWSA permission to levy a distribution system improvement charge on water and sewer bills to pay for the costly repairs and replacements.

The inability and or the unwillingness of the city to manage its water and sewer system effectively and keep it in good shape have forced the Legislature to take the drastic step of placing a municipal authority under the regulatory control of the PUC and has given the PUC specific mandates as to steps that must be taken to fix the problems at the PWSA.

This process will be painful for customers of the PWSA. But years of neglect and misuse of the PWSA by city officials has made the actions taken by the Legislature necessary. Now the city’s elected officials can blame the PUC and Harrisburg when the inevitable detours and serious inconveniences due to construction get underway and higher water bills start arriving in mailboxes. Will the electorate and customers accept the blame-shifting?

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