

Prepared Testimony of the Pennsylvania Public Utility Commission

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Pennsylvania Public Utility Commission

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Introduction

Thank you, Chairwoman Muth, Senators Williams and Collett and members of the Senate Democratic Policy Committee for the opportunity to present testimony on behalf of the Pennsylvania Public Utility Commission as you explore important questions about funding and investment in Pennsylvania's water, wastewater and stormwater systems.

Like other fixed utilities, the water industry faces challenges caused by its outdated infrastructure. Keenly aware of these challenges, water, wastewater and stormwater utility systems have several options for infrastructure investment which will be detailed in this testimony.

PUC Regulation of Water, Wastewater and Stormwater Systems

The Commission regulates approximately 72 water, 47 wastewater, and one stormwater utility. The lone stormwater utility regulated by the Commission is the Pittsburgh Water and Sewer Authority (PWSA), pursuant to a statutory requirement (66 Pa.C.S. § 3201).

PWSA's stormwater rates are included in its approved stormwater tariff, and its stormwater services must comply with Commission regulations and orders to the same extent as PWSA's other services, subject to PWSA's Commission-approved stormwater compliance plan.¹ PWSA's 2023-2027 Capital Improvement Plan, included as Appendix L with its most recent quarterly compliance plan update, identified approximately \$161 million in anticipated stormwater capital investments by 2027.²

The Commission does not regulate any other municipal authorities nor municipal systems if those systems serve only within their municipal boundaries. However, for municipal systems that serve the public outside their municipal boundaries, the Commission maintains jurisdiction over the rates and service to those outside customers. The largest of the water and wastewater utilities for which the Commission has jurisdiction, apart from PWSA, are investor-owned systems.

Infrastructure Investment by PUC Jurisdictional Utilities

Jurisdictional utilities are required to undertake investments to provide adequate service and to maintain their systems in proper working order (66 Pa.C.S. § 1501). Jurisdictional utilities recover the investment on those capital improvement projects primarily through base rate cases.

¹ PWSA's stormwater compliance plan may be viewed here: <https://www.puc.pa.gov/pcdocs/1762186.pdf>. PWSA's full Compliance Plan proceeding may be found at Docket Nos. M-2018-2640802 and M-2018-2640803.

² See here for PWSA's most recent quarterly compliance plan update: <https://www.puc.pa.gov/pcdocs/1794180.pdf>.

Capital improvement investments may be funded through various sources such as retained earnings, short-term debt, long-term debt, and the issuance of securities, such as shares of stock.

Water and wastewater utilities may also utilize funding from the Pennsylvania Infrastructure Investment Authority (PENNVEST). PENNVEST loans have low to zero interest rates and the utilities typically utilize a PENNVEST surcharge, which allows a utility to recover debt costs for improvements over the length of loan for such improvements.

On a more limited basis, PENNVEST may also offer grants for those smaller systems in distress, or for larger utilities that acquire distressed systems. Similarly, the Water Infrastructure Finance and Innovation Act (WIFIA) established a federal funding program for eligible water and wastewater infrastructure projects, under which PWSA was recently awarded a \$52 million loan that may save approximately \$20 million in financing costs. PWSA also received \$17 million in American Rescue Plan Act funds from the City of Pittsburgh to replace lead service lines.³

Long Term Infrastructure Improvement Plan and the Distribution System Improvement Charge

Two of the most formative tools utilized by the Commission and its regulated utilities to facilitate accelerated investment in system remediation are the Long-term Infrastructure Improvement Plan (LTIIIP) and the Distribution System Improvement Charge (DSIC). Each of Pennsylvania's major water and wastewater utilities have a Commission approved LTIIIP. The LTIIIPs establish the long-term investment goals of utilities and therein also establish the benchmark through which the Commission judges those utilities' investment reasonableness over time.

Utilities must have an approved LTIIIP before utilizing the DSIC. Water and wastewater utilities may recover a return on accelerated capital investments on a more current basis through the DSIC (66 Pa.C.S. § § 1350-1360). The DSIC is a bill surcharge that is capped at a certain percentage of the customer's eligible rates and is intended to recover the cost of investments that are placed in service between base rate cases.

For wastewater utilities, the statutory limit for DSIC is 5% of the eligible amount billed to a customer, but utilities may petition to exceed that limit. Water utilities have a DSIC cap of 7.5% of eligible rates, pursuant to 66 Pa.C.S. § 1358(a)(2).

Also, it is important to note that for electric and natural gas, DSIC is only for distribution rates. For wastewater, it is "applicable" rates, and for water, it is "7.5% of the amount billed".

³ For more information, see here: <https://www.pgh2o.com/news-events/news/newsletter/2023-06-23-pgh2o-community-pwsa-hosts-mayors-are-rebuilding-pa-tour>.

Both wastewater collection and treatment/disposal rates and water supply and treatment/disposal rates are bundled and are both subject to DSIC – unlike electric/gas, where only distribution is Commission-regulated.

Jurisdictional water utilities have invested more than \$2.2 billion in capital improvements through the DSIC since 2014, including approximately \$1.3 billion since 2020. Jurisdictional wastewater utilities have invested over \$117 million through DSIC in that same period, including \$78 million, since 2020.

DSIC investments are ultimately incorporated into base rates through a base rate case, and the DSIC surcharge is zeroed out at that time. The DSIC surcharge can only begin again after the utility undertakes accelerated capital investments, subsequent to the base rate case approval.

Fully Projected Future Test Year Rate Case Recovery

Jurisdictional utilities may also seek recovery of investments in planned capital projects through the use of a fully projected future test year when filing a base rate case (66 Pa.C.S. § 315(e)).

Essentially, this means that a utility can have some assurance that it may have an opportunity to recover its investments in a future capital project, if those investments are approved through the base rate case process and if the investments occur within that future test year (the year the new rates would go into effect).

Encouragement to Seeking Lowest Cost Funding Opportunities

The Commission encourages its utilities to seek the lowest cost funding, if available. For example, PENNVEST loans or grants. The Commission issued two letters to all jurisdictional water and wastewater utilities on October 31, 2022, and on March 9, 2023. Those letters noted that PENNVEST has loans and other funds that may be available for water and wastewater system upgrades and infrastructure replacement, including for lead service lines and issues related to polyfluoroalkyl substances (PFAS) and Perfluorooctanoic acid (PFOA).

Growing Challenges for Water and Wastewater Systems

The Commission is aware of the pace and impact of federal and state regulations as they pertain to drinking water and wastewater and how those may impact jurisdictional utilities and rates. Specifically, the Environmental Protection Agency (EPA) and Pennsylvania Department of Environmental Protection (DEP) regulations related to the lead and copper rule and for PFOA/PFAS contaminants.

The Commission has promulgated regulations at 52 Pa. Code § § 65.51-65.62 pertaining to the replacement of lead service lines, which align with the EPA and DEP lead and copper rule regulations. Utilities may seek recovery of those lead service line replacements through the DSIC and/or base rates. As noted above, the Commission has informed its utilities of the possible available funds through PENNVEST.

While the Commission has no regulations pertaining to PFOA/PFAS, the DEP has promulgated PFOA/PFAS testing and treatment regulations. The current DEP PFOA/PFAS regulations may cause a financial strain for some jurisdictional water systems that have PFOA/PFAS above the DEP limits. The EPA has performed cost estimations for both capital (i.e., initial expenditures to prepare for and install treatment processes) and operations and maintenance (O&M) costs (i.e., ongoing expenses of continuing treatment) of PFAS treatment as part of the rulemaking process for its proposed National Primary Drinking Water Regulation.⁴

The cost estimates are mid-level estimates for treatment costs using Granular Activated Carbon and are scaled to the water treatment capacity of the plant in millions of gallons per day (MGD). For large water treatment plants designed for 10 MGD, capital costs are estimated to be approximately \$7 million, and O&M costs were estimated to be approximately \$1 million per year. For small water treatment plants below 0.1 MGD, capital costs are estimated to be approximately \$700,000, and O&M costs are estimated to be approximately \$30,000 per year.

In its Safe Drinking Water PFAS MCL Rule, DEP included detailed cost estimations for both monitoring compliance with the rule and for treatment to remove PFAS if necessary. These estimates are specific to estimated treatment needs in Pennsylvania.⁵

The Commission is developing an internal process for proactive communication with its smaller water utilities on the lead service line regulation requirements in early 2024, at which time the issue of PFOA/PFAS compliance will be addressed.

It appears that any impact of the DEP PFOA/PFAS regulations on the larger utilities can be managed through the normal capital investment process without a significant impact to customer rates. However, if the EPA were to issue more stringent PFOA/PFAS limits, such as those in its proposed National Public Drinking Water Regulation, the impact to jurisdictional ratepayers may be significant, absent some external low or no-cost funding.

⁴ For more information on the EPA cost estimates, see here: https://www.epa.gov/system/files/documents/2023-08/Presentation-Final-PFAS-National-Primary-Drinking-Water-Regulation_1.pdf.

⁵ The DEP PFAS MCL Rule, including the cost estimates, may be found here: <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol53/53-2/46.html>.

Conclusion

In conclusion, the Commission appreciates the efforts of the committee to foster a robust discussion about infrastructure funding for the water, wastewater and stormwater systems serving our communities. We stand ready to answer any questions about the PUC's work with jurisdictional utilities and serve as a resource for this ongoing conversation.