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September 19, 2019

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
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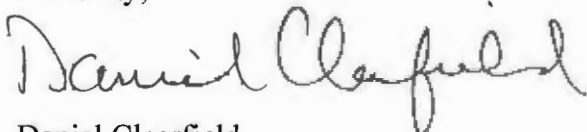
Re: Implementation of Chapter 32 of the Public Utility Code RE: Pittsburgh Water  
and Sewer Authority; Docket Nos. M-2018-2640802 and M-2018-2640803

Petition of the Pittsburgh Water and Sewer Authority for Approval of Its Long-Term  
Infrastructure Improvement Plan; Docket Nos. P-2018-3005037 and P-2018-3005039

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Pittsburgh Water and Sewer Authority's ("PWSA")  
Main Brief with regard to the above-referenced matter. Copies to be served in accordance with  
the attached Certificate of Service.

Sincerely,



Daniel Clearfield

DC/lww  
Enclosure

cc: Hon. Conrad Johnson w/enc.  
Hon. Mark Hoyer w/enc.  
Certificate of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the PWSA's Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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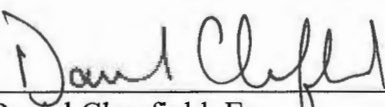
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Dated: September 19, 2019

  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water And Sewer Authority	:	Docket No.	M-2018-2640802 (water)
	:		M-2018-2640803 (wastewater)
	:		
And	:	And	
	:		
Petition for The Pittsburgh Water and Sewer Authority for Approval of Its Long- Term Infrastructure Improvement Plan	:	Docket No.	P-2018-3005037 (water)
	:		P-2018-3005039 (wastewater)
	:		

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**MAIN BRIEF OF  
THE PITTSBURGH WATER AND SEWER AUTHORITY**

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## **I. INTRODUCTION AND STATEMENT OF THE CASE**

The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) is committed to achieving full compliance with applicable law and the regulations of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) in the course of providing safe and adequate water and wastewater service at reasonable rates, as well as establishing a reputation for being a highly responsive and trusted public utility, recognized for excellence and valued by the community and its customers.

In the past, however, frequent management turnover, decades of inadequate funding, and politically motivated investment decisions prevented proper operation and maintenance of the Authority’s water and wastewater operations, system replacements and upgrades, and the hiring of strategic professional staff to operate the utility. Recently, with a new PWSA Board and leadership team, the Authority has started to correct past issues with quantifiable improvements. PWSA’s new management team and its Board of Directors therefore welcomed the General Assembly’s decision, in enacting Act 65 of 2017 (“Act 65”) and adding “Chapter 32”<sup>1</sup> to the Public Utility Code, to have PWSA’s rates and service regulated by the Commission. In light of the prior state of the Authority’s water and wastewater operations, however, it is going to take time for the PWSA to become fully compliant with applicable law and Commission regulations.

Through its “Compliance Plan”<sup>2</sup> or “CP” filed on September 28, 2018 and supplemented by its “Compliance Plan Supplement” on February 1, 2019,<sup>3</sup> PWSA seeks approval from the

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<sup>1</sup> 66 Pa.C.S. § 3201 to 3209. The terms “Act 65” and “Chapter 32” may be used interchangeably within this document.

<sup>2</sup> PWSA Hearing Exh. 1 (Compliance Plan). Unless the context indicates otherwise, references to the “Compliance Plan” or “CP” should be read as referring to the Compliance Plan as supplemented by the “Compliance Plan Supplement” and as modified by the Settlement.

<sup>3</sup> PWSA Hearing Exh. 2 (Compliance Plan Supplement).

Commission of PWSA's plans to achieve full regulatory compliance as required by Chapter 32. The Authority's Compliance Plan includes plans designed to bring PWSA's existing information technology, accounting, billing, collection and other operating systems and procedures into compliance with the requirements of the Public Utility Code and the applicable rules, regulations, and orders of the Commission, or to recognize their existing compliance.

PWSA also filed and later supplemented its Long Term Infrastructure Improvement Plan ("LTiIP"), wherein it sought Commission approval of its plans to replace and improve aging infrastructure. The LTiIP includes information on how PWSA intends to replace and/or upgrade targeted eligible property to improve system reliability and safety, and it includes metrics that PWSA uses to track and evaluate the effectiveness of infrastructure improvements. The LTiIP also provides the rationale used to select and target eligible programs and property for LTiIP consideration, and a projection of annual capital expenses to ensure that the LTiIP is cost-effective. PWSA's Compliance Plan and LTiIP filings were consolidated and are before the Commission for approval in these proceedings.

Throughout the course of this proceeding, PWSA engaged in extensive settlement discussions with the parties in an effort to reach a consensus on PWSA's path forward towards full compliance with Commission requirements. The parties were able to reach an agreement on the vast majority of the issues, and on September 13, 2019, the parties filed a Joint Petition for Partial Settlement ("Joint Petition" or "Partial Settlement"). The Joint Petition deferred some issues to future proceedings and reserved for litigation 16 issues, which can be categorized into the following five topics and will be addressed in this Main Brief: 1) the Cooperation Agreement ("1995 Cooperation Agreement" or "Cooperation Agreement") between PWSA and the City of Pittsburgh ("City" or "Pittsburgh") effective January 1, 1995; 2) the metering and billing of

municipal properties and public fire hydrants within the City; 3) reconciliation of the conflicting Commission Line Extension Regulations and line extension provisions in the Municipality Authorities Act<sup>4</sup> (“MAA”); 4) PWSA’s residency requirement; and 5) lead remediation issues.

Approval of the proposals in PWSA’s Compliance Plan and LTIP filing, the stipulations agreed to by all the Parties set forth in the Joint Petition, as well as the positions set forth by PWSA that are advanced in this Main Brief, will result in a plan for compliance that will ensure that PWSA will provide and maintain adequate, safe, reliable and reasonable service, consistent with Commission rules and the Public Utility Code. The proposals are further designed to achieve full compliance in an efficient and effective manner and to ensure that PWSA has a reasonable amount of time and resources available to achieve these goals. As such, the Authority requests that the Commission consider PWSA’s proposals concurrently with the other commitments that PWSA has made in the Joint Petition and in consideration of the issues that have been reserved for future proceedings. By considering all proposals as a comprehensive plan, the Commission can help to ensure that PWSA’s plans for full compliance are achievable, reasonable, and in the public interest.

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<sup>4</sup> 53 Pa.C.S. § 5601, *et seq.*

## II. PROCEDURAL HISTORY<sup>5</sup>

### A. BACKGROUND OF PWSA TRANSITION TO COMMISSION JURISDICTION

Pursuant to Act 65<sup>6</sup>, the Commission has jurisdiction and oversight over the provision of “utility” service by certain municipal authorities created under the MAA by Pennsylvania cities of the second class. At present, the City of Pittsburgh is Pennsylvania’s only city of the second class, and PWSA is the only municipal authority impacted by the passage of Act 65.

PWSA is a municipal authority organized and existing under the MAA. PWSA provides service to approximately 110,000<sup>7</sup> residential, commercial and industrial customers. It provides water service in: portions of the City; the Borough of Millvale; and portions of Reserve, O’Hara, and Blawnox Townships, Allegheny County. PWSA also provides wastewater conveyance service to customers located in the City, and conveys wastewater for portions of 24 neighboring communities.

On January 18, 2018, the Commission issued its Tentative Implementation Order (“TIO”) in Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater), whereby it requested comment on proposals to implement Chapter 32. Comments in response to the TIO were submitted by PWSA, the Commission’s Bureau of Investigation and Enforcement (“I&E”),

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<sup>5</sup> The Joint Petition filed in this proceeding on September 13, 2019 included a complete discussion of the Procedural History of this proceeding. For the sake of brevity, PWSA is summarizing the Procedural History in this Main Brief. For a complete discussion of the Procedural History, please see pages 2-13 of the Joint Petition.

<sup>6</sup> In accordance with Act 65, the Pennsylvania Public Utility Code Pa. Consolidated Statutes (Title 66) was amended to establish regulatory deadlines, requirements, and obligations for subject entities, which are now codified in Chapter 32 of Title 66. Chapter 32 has prescribed a process for the regulation of the rates and service of subject utilities, including PWSA, and a process to transition subject utilities to Commission jurisdiction. Chapter 32 also addresses the replacement and improvement of aging infrastructure and environmental compliance for those entities.

<sup>7</sup> There are about 81,000 water service lines, which includes about 70,000 residential service lines. PWSA Hearing Exh. 1 (Compliance Plan) at 2, 20; PWSA Exh. RAW/C-44 at 1, 5. There are about 27,000 additional wastewater only customers. PWSA St. C-2SD (Lestitian) at 6.

the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), Pennsylvania American Water Company (“PAWC”), Pittsburgh UNITED (“UNITED”), the Blue Ribbon Panel of the City (“Blue Ribbon Panel”), and various individuals.<sup>8</sup>

On March 15, 2018, the Commission issued a Final Implementation Order (“FIO”) in Docket Nos. M-2018-2640802 and M-2018-2640803, laying out a process for implementing Chapter 32, including tariff approval, ratemaking, compliance plan, and assessment provisions. PWSA’s water and wastewater operations became subject to the jurisdiction of the Commission on April 1, 2018, pursuant to Chapter 32.<sup>9</sup> PWSA’s currently approved water tariff<sup>10</sup> became effective on March 1, 2019.<sup>11</sup> PWSA’s currently approved wastewater tariff<sup>12</sup> also became effective on March 1, 2019.<sup>13</sup>

On September 26, 2018, the Commission issued a Secretarial Letter (“September Secretarial Letter”) explaining, among other things, that the Commission would publish notice of PWSA’s Compliance Plan and the procedures related thereto in the *Pennsylvania Bulletin* on October 13, 2018.<sup>14</sup> The September Secretarial Letter further provided that within 45 days from the date of publication in the *Pennsylvania Bulletin*, it would refer PWSA’s Compliance Plan to the Office of Administrative Law Judge (“OALJ”) “for the resolution of any factual matters that

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<sup>8</sup> Partial Settlement at ¶¶ 6, 23, 62. The Blue Ribbon Panel and the individuals are not parties to this consolidated proceeding. *Id.*

<sup>9</sup> 66 Pa.C.S. § 3202(a)(1); FIO at 6-8.

<sup>10</sup> This tariff is available at: <http://www.puc.state.pa.us/pcdocs/1607874.pdf>.

<sup>11</sup> See the March 6, 2019 Secretarial Letter entered at Docket Number R-2018-3002645, which is available at: <http://www.puc.state.pa.us/pcdocs/1608677.docx>.

<sup>12</sup> This tariff is available at: <http://www.puc.state.pa.us/pcdocs/1607875.pdf>.

<sup>13</sup> See the March 6, 2019 Secretarial Letter entered at Docket Number R-2018-3002647, which is available at: <http://www.puc.state.pa.us/pcdocs/1608676.docx>.

<sup>14</sup> <https://www.pabulletin.com/secure/data/vol48/48-41/1605.html>.



PWSA or interested parties may seek to develop.” It directed the OALJ to submit a recommended decision on the issues raised by PWSA or the parties no later than eight (8) months from the date on which the matter is assigned to OALJ.

#### **B. RECORD OF THIS PROCEEDING**

On September 28, 2018,<sup>15</sup> PWSA filed: (a) its Compliance Plan at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater); and (b) its LTIIP, which was docketed at Docket Nos. P-2018-3005037 (water) and P-2018-3005039 (wastewater). These proceedings were subsequently consolidated, upon motion by PWSA, by Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Conrad A. Johnson (collectively, the “ALJs”).<sup>16</sup> The following entities filed Answers and/or Interventions or otherwise entered their appearance in this proceeding: the OCA, the OSBA, I&E, PAWC, and UNITED.

Via Secretarial Letters issued on September 26, 2018<sup>17</sup> and November 27, 2018,<sup>18</sup> the Commission established the general framework for the review and investigation of the Compliance Plan. The November Secretarial Letter established a two-stage review process for

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<sup>15</sup> In its FIO, the Commission established a due date of September 28, 2018, for the filing by PWSA of a Compliance Plan and a LTIIP.

<sup>16</sup> First Interim Order Granting Motion for Consolidation of Proceedings (dated February 21, 2019), which is available at: <http://www.puc.state.pa.us/pcdocs/1606656.doc>.

<sup>17</sup> <http://www.puc.state.pa.us/pcdocs/1587126.docx>.

<sup>18</sup> On November 28, 2018, the Commission issued a Corrected Secretarial Letter (“November Secretarial Letter”), <http://www.puc.state.pa.us/pcdocs/1595705.docx>, and the accompanying Technical Staff Initial Report and Directed Questions – Stage 1 (“Stage 1 Initial Report”), <http://www.puc.state.pa.us/pcdocs/1595707.docx>, which lists a variety of specific questions that PWSA and the parties were directed to address as part of the Stage 1 litigation. The terms “Directed Question,” “Staff Question,” and/or “Question” may be used interchangeably within this document to refer to the specific questions with the Stage 1 Initial Report. For ease of reference PWSA Exhibit RAW/C-1 reprinted the Commission’s questions and sequentially numbers them. <http://www.puc.state.pa.us/pcdocs/1595705.docx>.

PWSA's Compliance Plan. The November Secretarial Letter also listed specific questions that PWSA and the parties were directed to address as part of the Stage 1 litigation.<sup>19</sup>

On February 1, 2019, PWSA filed a Compliance Plan Supplement.<sup>20</sup> On February 14, 2019, PWSA served its written direct testimony and exhibits. On April 5, 2019, I&E, OCA, OSBA, UNITED, and PAWC served their written direct testimony and accompanying exhibits, if any. PWSA, OCA, OSBA, and PAWC served their written rebuttal testimony and accompanying exhibits, if any, on May 6, 2019. On May 17, 2019, I&E, OCA, OSBA and UNITED served their written surrebuttal testimony and accompanying exhibits, if any.

On August 2, 2019, PWSA and OSBA served written supplemental direct testimony and exhibits. On August 14, 2019, PWSA served its written supplemental rebuttal testimony (in response to the OSBA's written supplemental direct testimony of August 2, 2018). I&E, OCA, OSBA and UNITED served their written supplemental rebuttal testimony and accompanying exhibits, if any, on August 14, 2019. On August 19, 2019, PWSA served written rejoinder testimony (in response to I&E's, OCA's, OSBA's and UNITED's written supplemental rebuttal testimony of August 14, 2018).

The technical evidentiary hearing was held on August 21, 2019. At that time, the parties moved their previously served written testimony and exhibits into the record. In addition to its previously served written testimony and exhibits, PWSA admitted various hearing exhibits into the record.

Beginning in May 2019, the parties held numerous settlement discussions. The parties identified a total of 186 discrete issues involved in this proceeding. Of these 186 issues, I&E,

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<sup>19</sup> See footnote 18.

<sup>20</sup> <http://www.puc.state.pa.us/pcdocs/1605098.pdf>.

OCA, UNITED, OSBA and PAWC were able to reach agreement regarding 139 issues (75%).<sup>21</sup> On September 13, 2019, the parties filed the Joint Petition, in which they seek Commission approval of the agreed-upon issues, proposed to defer another 27 issues to future proceedings (including those issues the Commission had already moved to Stage 2), and reserved for litigation another 16 issues. These 16 issues can be categorized into the following five topics, which will be addressed in this Main Brief: 1) the Cooperation Agreement; 2) the metering and billing of municipal properties and public fire hydrants within the City; 3) reconciliation of the conflict between the line extension rules in the Municipality Authorities Act and the Commission's line extension regulations; 4) PWSA's residency requirement; and 5) lead remediation issues.

### **III. LEGAL STANDARDS AND BURDEN OF PROOF**

Chapter 32 of the Public Utility Code gives the Commission jurisdiction and oversight over PWSA. Under Chapter 32, the provisions in the Public Utility Code apply to PWSA in the "same manner as a public utility."<sup>22</sup> So, the Commission has jurisdiction over the provision of water and wastewater<sup>23</sup> service by the PWSA.<sup>24</sup>

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<sup>21</sup> An additional four issues are no longer open due to either the passage of time and/or the resolution of other related matters.

<sup>22</sup> 66 Pa.C.S. § 3202(a)(1). The plain language in Section 3202(a) (apply in the "same manner") does not define PWSA as a "public utility." *Id.*; 66 Pa.C.S. § 102 (definitions). Nor does that language expressly confer any additional rights or powers upon PWSA.

<sup>23</sup> The term "wastewater" includes (but is not limited to) sewage, infiltration or inflow into sewers, and storm water which is or will become mixed within a combined sewer system. *See* 66 Pa.C.S. § 102. The term does not include storm water collected in a (stand-alone) municipal separate storm sewer. *Id.*

<sup>24</sup> The Commission has also interpreted Chapter 32 as providing it with jurisdiction over the stand-alone storm water service provided by PWSA. *See Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water And Sewer Authority*, Docket No. M-2018-2640802 (water) and M-2018-2640803 (wastewater), Final Implementation Order ("FIO") entered March 15, 2018, at p. 5. Please note that storm water issues are reserved for Stage 2 of this proceeding. See the November Secretarial Letter.

Chapter 32 requires the PWSA to file a compliance plan with the Commission.

Specifically, Section 3204(b) of the Commission's regulations provides, as follows:

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).<sup>25</sup>

Chapter 32 further provides that the Commission shall review PWSA's Compliance Plan filing and grants the Commission the authority to order PWSA 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."<sup>26</sup> Thus, approval of the Compliance Plan is appropriate if it will ensure adequate, efficient, safe, reliable and reasonable service.<sup>27</sup>

Section 332(a) of the Public Utility Code governs the allocation of the burden of proof.

Section 332(a) provides, in pertinent part, as follows:

(a) Burden of proof -- Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.<sup>28</sup>

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<sup>25</sup> 66 Pa.C.S. § 3204(b).

<sup>26</sup> 66 Pa.C.S. § 3204(c).

<sup>27</sup> Achieving full compliance is a process that will not be achieved overnight. As noted, it will take time for the PWSA to modify its facilities, equipment, processes and procedures in order to become fully compliant with applicable law and Commission regulations. PWSA's proposals, however, are designed to achieve – over time – full compliance in an efficient and effective manner and to ensure that PWSA has a reasonable amount of time and resources available to achieve these goals.

<sup>28</sup> 66 Pa.C.S. § 332(a).

For actions before the Commission, the burden of proof is a “preponderance of the evidence” standard.<sup>29</sup> Proving an allegation by a “preponderance of the evidence” means that one party has presented evidence, which is more convincing, by even the smallest amount, than the evidence presented by the other party.<sup>30</sup>

The burden of proof is comprised of two distinct burdens: the burden of production and the burden of persuasion. The burden of production determines which party must come forward with evidence to support a particular proposition.<sup>31</sup> The burden of persuasion determines which party must produce sufficient evidence to demonstrate that it is entitled to a favorable ruling.<sup>32</sup> While the burden of production may shift back and forth during a proceeding, the burden of persuasion remains with the proponent of a rule or order.<sup>33</sup> A party that offers a proposal not included in the original filing bears the burden of proof for that proposal.<sup>34</sup>

As such, as the proponent of its Compliance Plan and LTIP filing, the Authority has the burden of proving by a preponderance of the evidence that its Compliance Plan and LTIP filings will result in PWSA providing adequate, efficient, safe, reliable and reasonable service and are in the public interest. PWSA does not have the burden of proof as to any proposals presented by other parties that were not included in PWSA’s filings. Rather, the proponent of said proposals

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<sup>29</sup> See *Suber v. Pa. Comm’n on Crime & Delinquency*, 885 A.2d 678, 682 (Pa.Cmwlth. 2005); see also *North American Coal Corp. v. Commonwealth of Pa.*, 279 A.2d 356, 359 (Pa.Cmwlth. 1971).

<sup>30</sup> See *Se-Ling Hosiery v. Margulies*, 70 A.2d 854, 855 (1950).

<sup>31</sup> See *In re Loudenslager’s Estate*, 240 A.2d 477, 482 (1968).

<sup>32</sup> *Reidel v. County of Allegheny*, 633 A.2d 1325, 1329 n. 11 (Pa.Cmwlth 1993).

<sup>33</sup> *Id.*

<sup>34</sup> See *Brockway Glass Co. v. PUC*, 437 A.2d 1067 (Pa.Cmwlth. 1981); *PUC v. Duquesne Light Company*, Docket Nos. R-2013-2372129, *et al.*, Opinion and Order (April 23, 2014).

bears the burden in those cases to demonstrate that its proposal(s) will result in PWSA providing adequate, efficient, safe, reliable and reasonable service.

#### **IV. SUMMARY OF THE ARGUMENT**

PWSA is transitioning to full compliance with the Public Utility Code and the regulations and orders of the Commission. PWSA has been diligently working to reasonably transition to full compliance in all areas based on the specific circumstances relevant to each area. So, PWSA is not in the same compliance position now as it was in April 2018 (when PWSA's operations became subject to the jurisdiction of the Commission) or November 2018 (when the PUC's Directed Questions were issued<sup>35</sup>).

PWSA and the parties were able to settle the large majority of issues raised in this Compliance Plan proceeding but several remain to be resolved. The first issue reserved by the parties for litigation involves the Cooperation Agreement between PWSA and the City. In PWSA's view, no need exists for the Commission to determine as part of this proceeding whether the 1995 Cooperation Agreement complies with the provisions of the Public Utility Code. Because it is being renegotiated by PWSA and the City, and the 2019 Cooperation Agreement will be filed with the Commission when it is approved by both PWSA and the City. PWSA respectfully submits that it is pointless to review the validity and legality of the 1995 Cooperation Agreement.

Regarding metering and public fire hydrants for City properties, significant movement in the right direction generally is underway. The Partial Settlement contains agreed-to processes that are significant steps forward towards compliance with Commission's requirements. These

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<sup>35</sup> See footnote 18.

processes, however, will not lead immediately, to full payment by the City. With respect to the City, PWSA's proposed resolutions will be included in the (new) 2019 Cooperation Agreement that will be subject to Commission approval in a future on-the-record proceeding. This is a reasonable path forward, given the existing relationship between the City and PWSA and the inherent challenges involved in transitioning to a new relationship.

Regarding line extensions, a unique situation is presented. It is necessary and appropriate for PWSA to follow the statutory line extension formulas in the MAA in lieu of the line extension formula in the Commission's regulations. Section 5607(d)(24) of the MAA creates a fair, reasonable and predictable economic statutory standard that cannot be legally circumvented by any municipal authority, including PWSA. Divergence from said statutory mandates and PWSA's current practices (which are consistent with the statutory mandates in the MAA) would be complex and costly and could result in litigation (due to the lack of compliance with the mandates in MAA). Therefore, the Commission should conclude that, in this instance, the MAA directives supersede the conflicting requirements of the Commission's line extension regulations. But, even if the Commission determines that PWSA has the power and ability to diverge from the statutory mandates in the MAA, PWSA respectfully requests that the Commission waive the application of its line extension regulations so as to permit PWSA to continue to use the formula required by the MAA.

The next issue reserved for litigation is PWSA's residency requirement. PWSA acknowledges that its residency requirement makes it challenging to meet its obligations under the Public Utility Code. However, PWSA is taking all steps that it can to address the challenges presented by the residency requirement and is working to stabilize its workforce through the hiring of permanent workers in every position. Ordinarily, the Commission leaves such internal



management decisions to the utility's board of directors. But, a revision might be justified if the Commission finds that PWSA's residency requirement impedes PWSA from providing adequate service at reasonable rates.

Three issues have been reserved for litigation regarding lead remediation. The litigated issues are exclusively related to the replacement of private-side (i.e., customer-owned) water service lines. As part of the Partial Settlement, PWSA committed to formulating a plan that will, over time, completely eliminate lead pipes in its water system serving residential households (not including either: (i) residential customers who simply refuse to have their private lines replaced – whether free of charge or with a stipend; or (ii) non-residential customers who may replace their galvanized iron lines at their expense).

PWSA elected to go well beyond any “Post-Action Level” obligations imposed by the Pennsylvania Department of Environmental Protection (“PADEP”) and to replace a residential customer-owned private side lead service line whenever PWSA replaces the public side of that service line, and to do so without directly charging the customer, to avoid “partial” replacements. Once PWSA is no longer subject to the 7% requirement imposed by PADEP regulations and the 2017 Consent Order and Agreement with PADEP, because its tap water testing no longer finds lead or copper that falls above the “Action Level,” and the Community Environmental Project is completed, it will continue to replace public and private-side lead lines. This will happen in one of three ways: (1) as part of PWSA's SDWMR Program; and (2) whenever PWSA replaces a public-side lead line in an emergency, line breaks or leaks; or (3) as part of the income based, customer initiated replacement program (PWSA will replace the corresponding public side lead line (if there is one) when the customer replaces his/her lead line). **The July 2019 Policy will**



**eventually address all known residential lead service lines – both public and private – in PWSA’s system.**

Opposing parties efforts to have the Commission direct more action by PWSA should be rejected because the requested actions: (a) go well-beyond what is required by environmental regulations or any federal or state mandates with regard to lead remediation; (b) are not within the Commission’s jurisdiction and authority to order PWSA to take steps addressing water quality or to replace private lead or galvanized lines for non-residential customers. Since there are no non-residential customers that have a private lead or galvanized iron service line and also a lead or galvanized iron public side line, PWSA is appropriately treating these non-residential customers differently — because they are different. All of these requested additional steps will impose additional, unnecessary costs on PWSA and its ratepayers who are already bearing a heavy burden for lead remediation and other necessary capital projects. Therefore, they should be rejected.

## **V. ARGUMENT**

### **A. THE COOPERATION AGREEMENT BETWEEN PWSA AND CITY OF PITTSBURGH EFFECTIVE JANUARY 1, 1995**

Effective January 1, 1995, PWSA and the City entered into the Cooperation Agreement providing for the City to furnish certain ongoing services to the Authority, for which the Authority compensates the City. The 1995 Cooperation Agreement was amended on March 21, 2011.<sup>36</sup> On February 4, 2019, PWSA’s Board voted to terminate the 1995 Cooperation

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<sup>36</sup> PWSA St. C-2 (Lestitian) at 8; Compliance Plan, Appendix B.

Agreement, effective on 90 days' notice, or on May 5, 2019.<sup>37</sup> Following that vote, PWSA's Board began negotiating with the City to develop a new Cooperation Agreement that is fair to the City, its taxpayers, PWSA and its ratepayers. PWSA's objective in the negotiations was to revise the 1995 Cooperation Agreement "so that annual payments reflect actual services being provided and the fair market value of those services."<sup>38</sup> Further, PWSA expects that a revised agreement will require the City to provide periodic invoices detailing the services furnished to PWSA and the fees for each service, and to address public fire protection.<sup>39</sup>

At the time of terminating the 1995 Cooperation Agreement, PWSA anticipated that if it was not successful in negotiating a new agreement by May 5, 2019, it would continue the negotiations and begin interacting with the City at arms-length on a transactional basis. PWSA explained that, under this approach, it would invoice the City for services on the basis of the fair market value and pay invoices received from the City on the same basis.<sup>40</sup> Subsequently, upon resolutions adopted by PWSA's Board, the termination of the 1995 Cooperation Agreement was extended to July 5, 2019<sup>41</sup> and to October 3, 2019.<sup>42</sup>

PWSA's Board approved a new Cooperation Agreement on June 7, 2019 ("2019 Cooperation Agreement"), which was presented to City Council on June 11, 2019. Public hearings were held on the proposed 2019 Cooperation Agreement on July 9, 2019. City Council passed a resolution on July 24, 2019, authorizing the 2019 Cooperation Agreement between the

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<sup>37</sup> PWSA St. C-2SD (Lestitian) at 3.

<sup>38</sup> PWSA St. C-2 (Lestitian) at 8.

<sup>39</sup> PWSA St. C-2 (Lestitian) at 8-9.

<sup>40</sup> PWSA St. C-2 (Lestitian) at 9.

<sup>41</sup> PWSA St. C-2R (Lestitian) at 7.

<sup>42</sup> PWSA St. C-2SD (Lestitian) at 3.

City and PWSA to provide for the rights and obligations of each party with respect to the other and for payments and cooperation between the parties.<sup>43</sup> The resolution authorized the Mayor to enter into the 2019 Cooperation Agreement and further provided “that the 2019 Cooperation Agreement shall be in a form approved by the City Solicitor and shall, in addition to the terms and conditions specified therein, contain other terms and conditions that may be in the interest of the City.”<sup>44</sup> If the Mayor makes any changes to the 2019 Cooperation Agreement, the Board will need to vote on whether to accept those changes.<sup>45</sup>

Upon final approval by the City and the Board, PWSA will file the 2019 Cooperation Agreement with the Commission pursuant to Section 507 of the Public Utility Code, which authorizes the Commission to institute proceedings to determine the reasonableness, legality or any other matter affecting the validity of agreements between a public utility and a municipal corporation.<sup>46</sup> As part of the Joint Petition filed in this proceeding on September 12, 2019, PWSA agreed that when making this filing, it will request that the Commission refer the 2019 Cooperation Agreement to the OALJ for a formal on-the-record proceeding.<sup>47</sup> Also, in making this filing, PWSA intends to request that the Commission permit PWSA to begin operating under the 2019 Cooperation Agreement, subject to subsequent retroactive revisions directed by the Commission under Section 508 of the Public Utility Code,<sup>48</sup> and subject to future Commission determinations regarding the impact on rates.<sup>49</sup> PWSA further plans to propose that it

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<sup>43</sup> PWSA St. C-2SD (Lestitian) at 3.

<sup>44</sup> PWSA St. C-2SD (Lestitian) at 4.

<sup>45</sup> PWSA St. C-2SD (Lestitian) at 4.

<sup>46</sup> 66 Pa.C.S. § 507; PWSA St. C-2SD (Lestitian) at 4.

<sup>47</sup> Partial Settlement at § III.P.1.

<sup>48</sup> 66 Pa.C.S. § 508.

<sup>49</sup> PWSA St. C-2SD (Lestitian) at 5.

immediately implement any changes to its practices resulting from the Commission's Order in this proceeding, which supersede the 2019 Cooperation Agreement.<sup>50</sup>

As explained by PWSA, beginning to operate, temporarily, under the 2019 Cooperation Agreement while a Commission investigation is pending is preferable to other available options. Continuing indefinitely to operate under the 1995 Cooperation Agreement would deprive PWSA's ratepayers of the many terms in the 2019 Cooperation Agreement that are more favorable for PWSA and its ratepayers.<sup>51</sup> PWSA also prefers this approach over interacting with the City on an arms-length transactional basis when the 1995 Cooperation Agreement is terminated. While such an interim approach, which would involve PWSA invoicing the City for services on the basis of the fair market value and paying invoices received from the City on the same basis, would be better than the *status quo*, it would not be as transparent to the Commission or interested parties and would be less structured for PWSA and the City.<sup>52</sup>

In PWSA's view, no need exists for the Commission to determine as part of this proceeding whether the 1995 Cooperation Agreement complies with the provisions of the Public Utility Code because it is currently being renegotiated by PWSA and the City. Because the 2019 Cooperation Agreement will be filed with the Commission when it is finally approved by both PWSA and the City, it is pointless to review the validity and legality of the 1995 Cooperation Agreement. Moreover, the parties have agreed as part of the Partial Settlement that several principles should apply to the Commission's review of the 2019 Cooperation Agreement, including the following: (a) any payments to the City must be just, reasonable and substantiated;

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<sup>50</sup> PWSA St. C-2SD (Lestitian) at 5.

<sup>51</sup> PWSA St. C-2SD (Lestitian) at 5.

<sup>52</sup> PWSA St. C-2SD (Lestitian) at 5-6.

(b) the City and PWSA's relationship should be conducted on an arm's length "business-like" basis; and (c) services provided by the City to PWSA, and vice versa, should be identified with detailed breakdown and be charged based on the related cost of service.<sup>53</sup>

In its Directed Question Nos. 71-77,<sup>54</sup> the Commission directed the parties to discuss several issues regarding the Cooperation Agreement, which are shown below in bold, followed by PWSA's responses to each question.

**71. Those services and related costs that PWSA can identify and quantify and the basis for those costs, e.g., market, cost plus, or other method.**

PWSA estimates that the cost of the services it provides to the City total almost \$20 million on an annual basis, which reflects actual or market costs. The City estimates that the cost of services that it provides to PWSA total approximately \$13 million. The cost categories, along with estimates of costs, are shown in Tables 1 and 2 below.<sup>55</sup>

Table 1 – PWSA Services Provided to City

<b>Item</b>	<b>Amount (\$)</b>
Subsidy and hydrant costs	5,740,155.00
City of Pittsburgh water and wastewater costs	5,172,699.00
Saw Mill Run costs	1,211,499.00
Miscellaneous costs	7,224,127.00
<b>Total</b>	<b>19,348,480.00</b>

Table 2 – City Services Provided to PWSA

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<sup>53</sup> Partial Settlement at § III.P.5.

<sup>54</sup> See PWSA Exhibit RAW C-1, which numbers the Commission's Directed Questions.

<sup>55</sup> PWSA St. C-2 (Lestitian) at 10; PWSA St. C-2R (Lestitian) at 10-11; PWSA Exhibit DML/C-6.

<b>Item</b>	<b>Amount (\$)</b>
Office of Management and Budget	4,606,068.90
Department of Public Works	4,722,317.30
Public Safety	TBD
Department of Mobility and Infrastructure	3,708,682.00
<b>Total</b>	<b>13,037,068.20</b>

**72. Whether PWSA can identify all categories of costs associated with the Cooperation Agreement.**

As noted in the response to Directed Question No. 71, PWSA has identified all categories of costs associated with the 1995 Cooperation Agreement.<sup>56</sup>

**73. Whether PWSA receives any services from the City of Pittsburgh at no cost.**

The services that PWSA receives from the City are aggregated and PWSA pays a lump sum for these services. As a result, PWSA does not know which services are being received at no cost. Further, PWSA is not aware whether it is paying for certain services that should be provided at no cost, such as police services when hydrants break. However, as part of the lump sum payment, PWSA is receiving valuable services from the City, such as pension services, fleet maintenance, vehicle fuel and permitting, which represent legitimate costs for PWSA to pay.<sup>57</sup>

**74. The potential for PWSA to terminate the Cooperation Agreement with the City, or otherwise allow the agreement to lapse, in favor of market-based procurement practices.**

As reflected by the fact that PWSA terminated the agreement by notice to the City on February 4, 2019, it is PWSA's position that it may terminate the Cooperation Agreement on 90

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<sup>56</sup> PWSA St. C-2 (Lestitian) at 11.

<sup>57</sup> PWSA St. C-2 (Lestitian) at 11.

days' notice.<sup>58</sup> Although market-based procurement practices could replace the 1995 Cooperation Agreement, PWSA prefers, as noted above, to begin operating under the 2019 Cooperation Agreement while it is pending Commission review for reasons of transparency and predictability.<sup>59</sup>

**75. Whether the Cooperation Agreement, or any other agreement, provides the City with free or discounted wastewater service, storm water service, or otherwise restricts the application of non-consumption fixed charges (i.e., customer charges) for water service.**

PWSA currently provides water service to various City and City affiliated locations either without metering and billing them or metering them but without billing. In addition to water service, PWSA also provides free storm water repairs in combined systems, implements City-Wide Green First infrastructure programs, and supports development of programs sponsored by the Urban Redevelopment Authority. Also, even though wastewater bills are not sent to some properties, PWSA still pays the Allegheny County Sanitary Authority ("ALCOSAN")<sup>60</sup> for the wastewater treatment charges incurred by these City properties. As to whether any agreement restricts PWSA from assessing a non-consumption fixed charge for water service, no language in the Cooperation Agreement or any other agreement expressly prohibits imposing a customer charge on the City. To date, PWSA has followed the practice of not imposing any charge on the City related to the provision of water service.<sup>61</sup>

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<sup>58</sup> PWSA St. C-2 (Lestitian) at 11.

<sup>59</sup> PWSA St. C-2SD (Lestitian) at 5-6.

<sup>60</sup> PWSA collects and conveys sewage to ALCOSAN for treatment. *See* footnote 83; PWSA Hearing Exh. 1 (Compliance Plan) at 23.

<sup>61</sup> PWSA St. C-2 (Lestitian) at 12.

**76. The extent to which the Public Utility Code overrides the binding arbitration provisions of the Cooperation Agreement.**

Due to the Commission's authority under Section 508<sup>62</sup> to vary, reform and revise contracts between a public utility and another entity, it appears that the Commission has the power to eliminate the binding arbitration provisions of the Cooperation Agreement.<sup>63</sup>

**77. As recommended at CP page 107, whether the Commission may exercise jurisdiction under 66 Pa.C.S. § 508 to revise the Cooperation Agreement and the most appropriate procedural vehicle for any such revision.**

PWSA views Section 508 as authorizing the Commission to vary, reform and revise the Cooperation Agreement.<sup>64</sup> As to the appropriate procedural vehicle, the Partial Settlement obligates PWSA, when filing the 2019 Cooperation Agreement, to request that the Commission refer it to OALJ for a formal on-the-record proceeding.<sup>65</sup>

**B. MUNICIPAL PROPERTIES AND PUBLIC FIRE HYDRANTS WITHIN THE CITY OF PITTSBURGH**

With the assumption of jurisdiction by the Commission, PWSA has been diligently working on how to reasonably transition to full Commission regulatory compliance in all areas based on the specific circumstances relevant to each area.<sup>66</sup> Transitioning to recovering costs from the City related to City meter installations, usage, and public fire hydrants presents a unique challenge because of the historical relationship between PWSA and the City.

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<sup>62</sup> 66 Pa.C.S. § 508.

<sup>63</sup> PWSA St. C-2 (Lestitian) at 12.

<sup>64</sup> 66 Pa.C.S. § 508.

<sup>65</sup> Partial Settlement at § III.P.1.

<sup>66</sup> PWSA St. C-1 (Weimar) at 21.



As explained in the Compliance Plan, PWSA is a municipal authority originally established by the City in 1984 to function as a financing authority.<sup>67</sup> Since 1995, PWSA has functioned as an operating authority under the City and has assumed responsibility for the day-to-day management, operation, maintenance, and improvement of virtually the entire City water supply, distribution, and wastewater collection systems.<sup>68</sup> As an entity created by the City subsequently tasked to take over from the City the responsibility for the City water and wastewater conveyance system, PWSA and the City do not have the traditional “independent” utility-customer relationship contemplated by Commission standard practices and regulations. Rather, their relationship is governed pursuant to a Cooperation Agreement, discussed above.<sup>69</sup> As a result, there are unmetered and unbilled City properties<sup>70</sup> and PWSA does not recover the costs of City public fire hydrants from the City. PWSA does not dispute that this historical relationship needs to change in order to be in compliance with Commission requirements so that, in the future, the City is treated more like a customer of PWSA rather than the historical owner of the system. As discussed in the previous section, PWSA is in the process of negotiating a new Cooperation Agreement with the City to devise a mutually agreeable path forward regarding their relationship now that PWSA is under the jurisdiction of the Commission.

Regarding metering and public fire hydrants, significant movement in the right direction is underway. Consistent with the Partial Settlement in this case, PWSA is: (1) identifying all

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<sup>67</sup> Compliance Plan at 14.

<sup>68</sup> Compliance Plan at 14; Compliance Plan at Appendix B.

<sup>69</sup> Compliance Plan at Appendix B.

<sup>70</sup> PWSA is aware of between 200-400 City-owned and/or operated locations where it either does not bill the City for water service or where it neither meters nor bills the City for water service. PWSA St. C-1 (Weimar) at 26. Pursuant to the 1995 Cooperation Agreement, PWSA provides up to 600 million gallons per year of unbilled water to the City. Compliance Plan at 108.

unmetered/unbilled properties;<sup>71</sup> and, (2) allocating the costs to install the necessary meters and bill future usage for non-municipal properties.<sup>72</sup> The Partial Settlement also commits PWSA to providing a class cost of service study reflecting all public fire hydrant costs and a rate design reflecting allocation of 25% of the costs to the City in its next rate case.<sup>73</sup> These agreed-to processes are a significant step forward regarding metering issues and rate design.

However, because these processes will not lead to full payment by the City immediately for: (1) metering municipal properties; (2) future usage; and, (3) public fire hydrants, some parties have taken the view that PWSA's proposals in this regard should be rejected. This view is taken even though all parties (as recognized in the Partial Settlement) acknowledge that PWSA's proposed resolutions are still being negotiated with the City to be included in a new Cooperation Agreement that will be subject to Commission approval in a future on-the-record proceeding.<sup>74</sup> Recognizing that the ultimate resolution of these issues is subject to negotiation with the City and final approval by the Commission in the context of Cooperation Agreement review, PWSA's Compliance Plan and supporting testimony offered details about the path forward being

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<sup>71</sup> PWSA's Professional Engineering Consultant is currently identifying and evaluating unmetered properties and flat-rate customers which includes the identification of properties within the City of Pittsburgh. PWSA anticipates that the work of identifying all unmetered and/or unbilled locations will be completed by June 29, 2020. Compliance Plan at 109-111; Partial Settlement at Section III.G.1; PWSA Exh. RAW/C-37 (which details the activities of PWSA's Professional Engineering Consultant). As unmetered properties are identified through this process, PWSA will install meters where they can be physically installed and PWSA anticipates that full meter installation can be completed within 5 years or by December 31, 2024. PWSA has also committed to accelerating this timeframe, if possible. PWSA St. C-1 (Weimar) at 26; Partial Settlement, Section III.G.1-2 at 18.

<sup>72</sup> As non-municipal meters are installed and/or current flat rate customers are converted to metered customers, PWSA will bill the account in full pursuant to the applicable tariff rate. Partial Settlement, Section III.H.1 at 19; PWSA St. C-1R (Weimar) at 21.

<sup>73</sup> Partial Settlement at § I.1 at 19; PWSA St. C-1 (Weimar) at 31.

<sup>74</sup> PWSA St. C-1 (Weimar) at 27; Partial Settlement at § III.G.3.b; III.H.2; III.I.2; and, III.P.1 at 19-20, 27.

negotiated by the City and PWSA. PWSA submits that these path forward proposals are reasonable for several reasons.

First, the City has never been billed for water at metered or unmetered locations and the City is not aware of the dollar amount it will have to pay once billing begins. The City needs a reasonable amount of time in which to understand the cost impact of these obligations so that it can plan accordingly.<sup>75</sup> Therefore, PWSA's proposals provide an appropriate transition timeframe during which the City can become knowledgeable about and incorporate into its budgeting process what will be significant new charges that the City will have to find a way to fund.<sup>76</sup>

Second, permitting PWSA the space to negotiate a mutually agreeable solution with the City (that everyone understands will be subject to Commission review and approval) is important for securing the City's agreement to actually start making payments once billed. Failure to secure the City's cooperation and just mandating that PWSA undertake the time and expense of metering and billing without any prospect of payment by the City will only increase PWSA's uncollectible expense without the desired result of ensuring that PWSA receives revenue for the services rendered.<sup>77</sup>

Third, this proceeding is governed by 66 Pa.C.S. § 3204(b) which required PWSA to file a "compliance plan. . . which shall include provisions to bring" PWSA "into compliance with the requirements applicable to other jurisdictional water and wastewater utilities."<sup>78</sup> Implicit in this

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<sup>75</sup> Compliance Plan at 110; PWSA St. C-1 (Weimar) at 27.

<sup>76</sup> Compliance Plan at 110-111; PWSA St. C-1 (Weimar) at 27; PWSA St. C-1R (Weimar) at 21.

<sup>77</sup> PWSA St. C-1 (Weimar) at 29.

<sup>78</sup> 66 Pa.C.S. § 3204(b) (emphasis added).

directive are the following: (1) PWSA is not currently “in compliance;” and, (2) PWSA needs a plan to come into compliance. PWSA’s proposals are consistent with the directives of the statute because they set forth a plan, or path by which PWSA will achieve compliance which, in this case, means that the City will be paying PWSA for services rendered. While the end result will not be achieved tomorrow and requires PWSA to engage in negotiations with its creator, PWSA submits that its proposed pathway to achieving ultimate compliance is reasonable and consistent with the statutory requirement to develop a plan to come into compliance.

Finally, the flexibility granted by the Legislature to the Commission in considering these complex issues is evidenced by 66 Pa.C.S. § 3202(b), which empowers the Commission to suspend or waive the applicability of any provision of the Public Utility Code to PWSA.<sup>79</sup> Therefore, the Commission is not required to look at PWSA’s compliance plan and determine whether its implementation will result in immediate compliance. Rather, the focal point of inquiry is whether PWSA’s proposal is a reasonable plan to achieve compliance in the future. For all the reasons explained more fully in the sections that follow, the ALJs should recommend that the Commission adopt PWSA’s proposals.

**1. Responsibility for Payment of Costs Related to Metering Municipal Properties with the City of Pittsburgh**

The agreement under negotiation with the City is to split the costs of meter installation for municipal properties on a 50/50 basis.<sup>80</sup> This is a reasonable approach that takes into consideration the historical relationship between the City and PWSA and the fact that this is an

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<sup>79</sup> 66 Pa.C.S. § 3202(b).

<sup>80</sup> PWSA St. C-1R (Weimar) at 18.

additional new cost that the City will need to fund. The approach is also an appropriate recognition of PWSA's tariff provisions which currently require consumers to pay in some circumstances and not in others.<sup>81</sup> Thus, while the metering of City properties is a new endeavor, an approach whereby the City agrees to equally share in the costs of the metering is not inconsistent with PWSA's current tariff that allocates these costs differently for specific situations. Ultimately, reaching agreement with the City to share in the costs is the optimal outcome because it ensures that PWSA will receive cost recovery for some of its costs.

**2. Billing Plan for Unmetered and/or Unbilled Municipal Properties Within the City of Pittsburgh**

In the Compliance Plan and in supporting testimony, PWSA set forth a proposed transition plan to ultimately achieve full payment by the City for usage at all metered properties. As noted, PWSA has agreed in the Partial Settlement to meter all unmetered City properties.<sup>82</sup> Pursuant to the proposed plan, the City would agree to start paying for usage for all metered properties at a specific percentage until that percentage reaches 100%.<sup>83</sup> So, in year one, the City would pay 20% of all metered usage. In year two, the City would pay 40% of all metered usage. In year three, the City would pay 60% of all metered usage. In year four, the City would pay 80% of all metered usage. By year five, the City would be paying PWSA for 100% of all metered usage.<sup>84</sup> As part of the plan, the City would pay the percentage applicable in the year in

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<sup>81</sup> PWSA Water Tariff at 42 (Fees for New Meters), 43 (New Meters) and 49 (Customer Facilities Fee).

<sup>82</sup> See Partial Settlement at § III.G.

<sup>83</sup> In response to Directed Question Number 83, PWSA Witness Weimar explained that PWSA charges for water and wastewater conveyance. PWSA also passes through the wastewater treatment charges of ALCOSAN. The proposed billing approach for the City would treat PWSA's charges and ALCOSAN's charges in the same manner. PWSA St. C-1 (Weimar) at 31.

<sup>84</sup> Compliance Plan at 110; PWSA St. C-1 (Weimar) at 27. In response to Directed Question number 86, PWSA Witness Weimar explained that this proposal is both phased and stepped. PWSA St. C-1 (Weimar) at 29-30.

which any new meter is installed. So, for example, a meter installed in year four would pay 80% of the metered usage.<sup>85</sup>

Upon review of this proposal, the Commission propounded directed questions to be discussed by the parties.<sup>86</sup> PWSA's responses to each of these questions further support the reasonableness of its proposal. Question 82, for example, asks PWSA to estimate the revenue loss associated with unmetered and unbilled usage. As explained by PWSA Witness Weimar, such estimates are not possible because there is presently no good method for estimating the use at unmetered locations and for locations that are derelict and will be torn down by the City. For those City facilities that currently have PWSA meters and can be measured, PWSA estimates that water used at these locations equates to about \$3.6 million annually in billed usage.<sup>87</sup> These estimates support a plan to collect payments from the City as soon as reasonably possible. PWSA submits that this is a more appropriate focus rather than requiring PWSA to undertake the time and expense that would be involved in trying to find a way to estimate usage or to bill all these locations on an unmetered basis. The quicker path forward is to focus on negotiating a payment agreement with the City and moving forward to getting the properties appropriately metered so that they are recording usage, enabling PWSA to issue proper bills that the City has agreed it will pay.

Several of the Directed Questions appear to agree with this view by asking whether there are methods for PWSA to immediately begin to receive payments whether by using estimates, applying the monthly customer charge to any known but unmetered or unbilled customer, or

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<sup>85</sup> PWSA St. C-1 (Weimar) at 27, fn 19.

<sup>86</sup> PWSA Exh. RAW/C-1, Directed Questions 82 through 89.

<sup>87</sup> PWSA St. C-1 (Weimar) at 28.

implementing a metering and billing triage plan immediately.<sup>88</sup> As explained above, it is difficult to estimate the usage of the City given the number of unmetered and/or unbilled properties, and PWSA does not view undertaking such a study as a prudent path forward.<sup>89</sup> Whether the estimate is to be developed based on an engineering estimate (Question 84) or implementation of a triage plan (Question 88), PWSA would still have the same problem of how to estimate the usage.

Regarding the feasibility of immediately applying the monthly customer charge to known but unbilled or unmetered customers prior to meter installation (Question 87), PWSA is evaluating the proposal for a flat rate for all unmetered and unbilled municipal and governmental properties/buildings served by PWSA.<sup>90</sup> The development and assessment of a flat rate is complicated because buildings are not homogeneous, and water line size is not necessarily indicative of use.<sup>91</sup> PWSA does not support immediate implementation of a flat-bill approach for the City because it would result in “rate shock” for the City, requiring all currently unbilled municipal buildings to pay for water and wastewater services all at once and because the billing arrangements with the City will be reviewed in the Cooperation Agreement proceeding. Because the City has never been required to pay these expenses, they are not incorporated into the City budget planning process.<sup>92</sup> Given these realities, imposing a flat rate on City properties will likely result simply in unpaid charges. Accordingly, PWSA’s proposal to conduct its analysis of this issue is reasonable.

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<sup>88</sup> PWSA Exh. RAW/C-1, Directed Questions 84, 85, 87, and 88.

<sup>89</sup> PWSA St. C-1 (Weimar) at 29.

<sup>90</sup> PWSA St. C-1R (Weimar) at 22.

<sup>91</sup> PWSA St. C-1R (Weimar) at 22.

<sup>92</sup> PWSA St. C-1R (Weimar) at 21.

Two of the Directed Questions (Question 83 and 85) ask about the legality of PWSA's proposed approach. PWSA submits that its approach is legal. As explained previously, this proceeding is governed by 66 Pa.C.S. § 3204(b), which required PWSA to file a "compliance plan. . . which shall include provisions to bring" PWSA "into compliance with the requirements applicable to other jurisdictional water and wastewater utilities."<sup>93</sup> Implicit in this directive: (1) PWSA is not currently "in compliance;" and, (2) PWSA needs a plan to come into compliance. PWSA's proposals are consistent with the directives of the statute because they set forth the path by which PWSA will achieve compliance, which, in this case, means that the City will be paying PWSA for services rendered.

### **3. Billing Plan For Public Fire Hydrants Within the City of Pittsburgh**

PWSA has committed to presenting a rate design reflecting allocation of 25% of the costs of public fire hydrants to the City in the next rate case and reserved the right to propose a phase-in period at that time.<sup>94</sup> For all the reasons previously discussed regarding the historical relationship with the City and the reasonableness of a transition to a new relationship whereby the City is paying PWSA for services rendered, PWSA submits that its approach should be approved. In addition, 66 Pa.C.S. § 1328(b)(1) does not mandate that a public utility be required to recover in rates the full cost of service related to public fire hydrants. Rather, it grants public utilities the ability to seek cost recovery and caps the amount of cost recovery to no more than 25% of the cost of service with the remainder of the costs to be assessed to all customers.<sup>95</sup> Thus, the fact that PWSA currently does not assess the costs of public fire hydrants to the City is not

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<sup>93</sup> 66 Pa.C.S. § 3204(b) (emphasis added).

<sup>94</sup> Partial Settlement at § III.I.1 at 19; PWSA St. C-1 (Weimar) at 31.

<sup>95</sup> 66 Pa.C.S. § 1328(a), (b).



out of compliance with the Public Utility Code. Notwithstanding this, PWSA has committed to identifying the costs of public fire hydrants and presenting a proposal to allocate 25% of the costs to the City in its next rate case proposal.<sup>96</sup> In doing so, PWSA reserved the right to propose a phase-in of those costs.<sup>97</sup> The agreement under negotiation with the City would phase-in the public fire hydrant costs using the same percentage stages (over the same 5 year period) that are discussed above and would be reviewed also as discussed above. PWSA's plan is reasonable and consistent with statutory requirements and should be approved.

**C. APPLICABILITY OF THE MUNICIPALITY AUTHORITIES ACT, 53 PA.C.S. § 5601, ET. SEQ., AND THE COMMISSION'S LINE EXTENSION REGULATIONS AT 52 PA.CODE §§ 65.1, 65.21-65.23**

**1. Introduction**

Act 65 establishes that the Public Utility Code shall apply to PWSA in the "same manner as a public utility."<sup>98</sup> Municipal authorities are entities organized and created, under the MAA, to accomplish certain purposes.<sup>99</sup> PWSA, as a municipal authority,<sup>100</sup> is an independent agency of the Commonwealth<sup>101</sup> and possesses only the powers that the General

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<sup>96</sup> Partial Settlement at § III.I.1 at 19; PWSA St. C-1 (Weimar) at 31.

<sup>97</sup> *Id.*

<sup>98</sup> 66 Pa.C.S. § 3202(a)(1). The plain language in Section 3202(a) (apply in the "same manner") does not define PWSA as a "public utility." *Id.*; 66 Pa.C.S. § 102 (definitions). Nor does that language expressly confer any additional rights or powers upon PWSA.

<sup>99</sup> 53 Pa.C.S. 5607; *See also Evans v. West Norriton Township. Municipal Authority*, 87 A.2d 474 (Pa. 1952) (stating that, "[a] Municipal Authority is defined by the Act as 'a body politic and corporate.' Its members are appointed by elected public officials. It receives a charter from the Commonwealth of Pennsylvania, which grants it certain characteristic attributes of a corporation. It is authorized by law and by its charter to perform vast private as well as certain limited public functions").

<sup>100</sup> *See, e.g.,* PWSA St. C-4 (Quigley) at 30.

<sup>101</sup> *Commonwealth v. Erie Metropolitan Transit Auth.*, 281 A.2d 882 (Pa. 1971) ("[t]his Court has consistently held that municipal authorities are not the creatures, agents, or representatives of the municipalities which organize them, but rather are 'independent agencies of the Commonwealth, and part of its sovereignty,'" quoting *Whitemarsh Twp. Auth. v. Elwert*, 196 A.2d 843 (Pa. 1964)); *Simon Appeal*, 184 A.2d 695 (Pa. 1962) (citing *Commonwealth ex rel. McCreary v. Major*, 22 A.2d 686 (Pa. 1941), it was held that a member of a board of a municipal authority created under the act of 1935 was a public official by reason of the fact that such entity is an independent agency of the Commonwealth and part of the sovereignty of the

Assembly has granted to it.<sup>102</sup>

Line extensions pose a unique problem of reconciling the mandates of the MAA and the regulatory authority of the Commission. Act 65 continues to recognize that PWSA is a municipal authority.<sup>103</sup> The General Assembly has **expressly mandated** that PWSA (and every other municipal authority) must act in (or refrain from acting in) certain ways<sup>104</sup> regarding line extensions, customer advance funding, and refunds.<sup>105</sup> Those statutory mandates balance the right of the municipal authority and the right of existing customers to avoid subsidizing uneconomic line extensions for new customers.<sup>106</sup> PWSA's position is straightforward: unlike any other provision of the MAA (which are grants of authority – not directives), municipal authorities only have the power to apply one line extension formula to customers requesting such

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state); *Rhoads v. Lancaster Parking Auth.*, 520 A.2d 122, 126 (Pa. 1987) (“Municipal authorities are independent corporate agents of the Commonwealth, which exercise governmental, as well as private corporate power, in assisting the Commonwealth in meeting the needs of its citizens”); *Bristol Twp. Water Auth. v. Lower Bucks County Joint Mun. Auth.*, 567 A.2d 1110 1113, (Pa.Cmwlt. 1989) (“[h]owever, as noted above, an authority which has been incorporated under the Act becomes an independent Commonwealth agency not subject to the control of the incorporating township”); *White Rock Sewage Corp. v. PUC*, 578 A.2d 984, 987 (Pa.Cmwlt. 1990) (“[m]unicipal authorities are not creatures, agents, or representatives of municipalities, which organize them, but rather are independent agencies of the Commonwealth and a part of its sovereignty” quoting *Highland Sewer & Water Auth. v. Engelbach*, 220 A.2d 390 (Pa. Super. 1966); *Lehigh-Northampton Airport Auth. v. Lehigh County Bd. of Assessment Appeals*, 889 A.2d 1168, 1176 (Pa. 2005) (the “fundamental nature” of a municipal authority is that of “a corporate agency of the state, and not a child of a municipality”).

<sup>102</sup> PWSA St. C-4 (Quigley) at 30; *Naylor v. Township of Hellam*, 773 A.2d 770, 773-774 (Pa. 2001). In addition, the Commission is a creature of statute and has only those powers which are expressly conferred upon it by necessary implication. *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (Pa. 1977).

<sup>103</sup> 66 Pa.C.S. § 3201, 3202(b), 3208.

<sup>104</sup> 53 Pa.C.S. § 5607(d)(24) (“Every authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section, including, but without limiting the generality of the foregoing, the following rights and powers: ... (24) To charge enumerated fees to property owners who desire to or are required to connect to the authority’s sewer or water system. ...”). Please note this quotation does not repeat the statutory formulas and limitations within 53 Pa.C.S. § 5607(d)(24). In addition, municipal authorities may levy and enforce special assessments against properties served. 53 Pa.C.S. §§ 5607(d)(21)-(22); PWSA St. C-4 (Quigley) at 31-32.

<sup>105</sup> *Id.*; PWSA St. C-4 (Quigley) at 31.

<sup>106</sup> *Id.*

an extension – the formula set out in the MAA in Section 5607(d)(24 – regardless of any general authority or requirements to set reasonable rates or provide adequate service. Opposition to continued compliance with statutory mandates appears to be based on the (alleged) “need” for consistency<sup>107</sup> with the line extension formula in the Commission’s regulations,<sup>108</sup> **not** that that end result would be better for anyone. That being said, divergence from said statutory mandates and PWSA’s current practices (which are consistent with the statutory mandates in the MAA<sup>109</sup>) would be complex and costly<sup>110</sup> **and** could result in needless litigation and, potentially, damage awards<sup>111</sup> (due to the lack of compliance with the mandates in MAA<sup>112</sup>).

Accordingly, in response to Directed Questions 44 to 47,<sup>113</sup> PWSA submits<sup>114</sup> that it is necessary and appropriate for PWSA to follow the statutory line extension formulas in the MAA in lieu of the line extension formula in the Commission’s regulations.<sup>115</sup> Section 5607(d)(24) of the MAA creates a fair, reasonable and predictable economic statutory standard that cannot be

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<sup>107</sup> See I&E St. 3 (Cline) at 45-46 wherein Mr. Cline merely states that PWSA should be required to comply with them on the basis that he was “advised by counsel that the Public Utility Code now supersedes the [MAA] regarding these matters.” See also I&E St. 3 (Cline) at 20-21. Regulations are designed to be complied with, but the strict application of the Commission’s line extension regulation to the specific and unique facts of PWSA — and the statutory mandate in the MAA — results in a conclusion that is nonsensical, as described in greater detail herein.

<sup>108</sup> 52 Pa.Code §§ 65.1, 65.21-65.22.

<sup>109</sup> PWSA St. C-4 (Quigley) at 30, 33; PWSA St. C-4R (Quigley) at 36.

<sup>110</sup> See PWSA St. C-4R (Quigley) at 37-38.

<sup>111</sup> PWSA St. C-4R (Quigley) at 36; See *Hidden Creek, L.P. v. Lower Salford Twp. Auth.*, 129 A.3d 602 (Pa.Cmwlth. 2015) (regarding developer’s claim of excessive tapping fees in violation of the MAA).

<sup>112</sup> PWSA St. C-4 (Quigley) at 32-34, stating that compliance with the requirements set forth in the Commission’s regulations would make PWSA’s process and procedures inconsistent with the MAA’s statutory provisions.

<sup>113</sup> Directed Questions 44 and 46 relate to the appropriateness of PWSA following the provisions of the MAA in lieu of the Commission’s regulations on line extensions, customer advance funding, and refunds. See PWSA Exh. RAW/C-1, Directed Questions 44, 46. Relatedly, Directed Questions 45 and 47 are concerned with the implementation of tariff provisions regarding those issues. *Id.* at Directed Questions 45 and 47.

<sup>114</sup> See PWSA St. C-4 (Quigley) at 34.

<sup>115</sup> 52 Pa.Code § 65.1, 65.21-65.22.

legally circumvented by any municipal authority, including PWSA. However, even if the Commission determines that PWSA has the power and ability to employ a different line extension formula, PWSA respectfully requests that the Commission waive its standard line extension regulations and permit PWSA to continue to use the MAA-required formula.

## **2. Background on line extensions**

### ***a. The statutory formula under Municipality Authorities Act***

As noted above, PWSA, as a municipal authority, only has the power that the General Assembly has granted to authorities.<sup>116</sup> PWSA is (and other municipal authorities are) generally empowered to charge “reasonable and uniform” fees for services provided.<sup>117</sup> However, the power of PWSA (and other municipal authorities) to devise and charge rates and fees for its services was expressly limited by the General Assembly in one area – line extensions.<sup>118</sup>

Through the extraordinarily detailed formulas in Section 5607(d)(24), the General Assembly limited the amounts that municipal authorities may charge for line extensions. To create a fair, reasonable and predictable economic standard for line extensions, Section 5607(d)(24) of the MAA contains lengthy and detailed directives regarding fees (or assessments<sup>119</sup>) from those who desire, or are required, to connect to a municipal authority’s

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<sup>116</sup> *Naylor v. Township of Hellam*, 773 A.2d 770, 773-774 (Pa. 2001).

<sup>117</sup> 53 Pa.C.S. § 5607(d)(9). PWSA may also establish certain rates by contract. *See* 53 Pa.C.S. § 5607(d)(19).

<sup>118</sup> 53 Pa.C.S. § 5607(d)(24). Section 5607(d)(24) was formerly 53 P.S. § 306.B(t). Under the MAA, these fees can take the form of (a) connection fees, (b) customer facility fees and/or (c) tapping fees. *See* 53 Pa.C.S. § 5607(d)(24).

<sup>119</sup> 53 Pa.C.S. § 5607(d)(21), (d)(22). A municipal authority may assess property owners for all or part of the costs of constructing sewer and water lines. In calculating assessments, the municipal authority may use either the benefits method, or the front-foot rule or both simultaneously on the same project. *Whitemarsh Twp. Auth. v. Elwert*, 196 A.2d 843 (Pa. 1964) (municipal authority could use both the front-foot method and the benefit method in its assessment of the sewer construction costs). The municipal authority may not recover more than the net project costs, after deducting any state or federal assistance, through the assessment process. *Bern Twp. Auth. v. Hartman*, 451 A.2d 567 (Pa.Cmwlth. 1982) (municipal authority

sewer or water system.<sup>120</sup> Each municipal authority only has the power to charge line extension fees that are consistent with the statutory formula.<sup>121</sup>

Unlike other provisions of the MAA that grant general authority to take certain actions the line extension provision is mandatory and exclusive. The statutory formulas cannot be legally circumvented by municipal authorities. The MAA provides that: **“No authority shall have the power to impose a connection fee, customer facilities fee, tapping fee or similar fee except as provided specifically under [53 Pa.C.S. § 5607(d)].”**<sup>122</sup> This language is intended to preclude municipal authorities from using any formula other than those using the statutory formulas under Section 5607(d)(24). It was also intended to preclude the use of other “fees” in lieu of the statutory formulas under Section 5607(d)(24).

The MAA expressly contemplates that Section 5607(d)(24) will prevail over the general power to set rates for municipal authorities, such as PWSA.<sup>123</sup> The MAA specifies the rights and powers of a municipal authority.<sup>124</sup> There is no ambiguity in the language of Section 5607(d)(24). The clear language in Section 5607(d)(24) limits the power of municipal authorities

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was not permitted by statute to recover more than the project’s construction costs). These assessments can be in addition to a tapping fee. *See* 53 Pa.C.S. § 5607(d)(24).

<sup>120</sup> 53 Pa.C.S. § 5607(d)(24). *See also* 53 Pa.C.S. § 5607(d)(23) (relating to posting of financial security); 53 Pa.C.S. § 5607(d)(30) (relating to the owners right to construct the system); 53 Pa.C.S. § 5607(d)(31) (relating to reimbursing private persons who may have originally paid for construction of the facilities.).

<sup>121</sup> *Id.*

<sup>122</sup> 53 Pa.C.S. § 5607(d)(24)(iii). There are no comparable provisions in the MAA for any other grant of authority. In other words, all other provisions in the MAA having to do with rates or charges to customers are permissive (“may”) rather than directive (“shall”).

<sup>123</sup> Pursuant to the Statutory Construction Act, 1 Pa.C.S. §§ 1501-1991, the overriding object of all statutory interpretation and construction is to ascertain and effectuate the intention of the General Assembly” in enacting the statute under review. 1 Pa.C.S. § 1921(a).

<sup>124</sup> *See* 53 Pa.C.S. § 5067(d). Section 5607(d) of the MAA begins as follows: “Every authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section, including, but without limiting the generality of the foregoing, the following rights and powers. ...”

to charge “reasonable and uniform” fees.<sup>125</sup> This means that municipal authorities — such as PWSA — are only empowered to charge line extension fees as provided for specifically in Section 5607(d)(24).<sup>126</sup> Under general principles of statutory interpretation, those clear words must be given effect.<sup>127</sup> Failure to comply with Section 5607(d)(24) would violate powers granted to PWSA under the MAA and could result in litigation and potential damage awards before the courts.<sup>128</sup>

***b. The Public Utility Code***

The Public Utility Code<sup>129</sup> does not contain specific statutory provisions on line extensions. The Public Utility Code does, however, provide the Commission with the power of oversight for public utilities.<sup>130</sup> The Commission also has jurisdiction over the rates<sup>131</sup> and character<sup>132</sup> of public utility service. This means that, absent other applicable statutory provisions, the Commission has discretion to define the appropriate amount of line extension fees and the circumstances in which a customer must contribute to an extension of service.<sup>133</sup>

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<sup>125</sup> Cf. 53 Pa.C.S. § 5607(d)(9) with 5607(d)(24).

<sup>126</sup> 53 Pa.C.S. § 5607(d)(24)(iii).

<sup>127</sup> See 1 Pa.C.S. § 1921(a), (b). Section 1921(a) of the Statutory Construction Act, 1 Pa.C.S. § 1921(a), provides, in part, that: “Every statute shall be construed, if possible, to give effect to all its provisions.” Section 1921(b) of the Statutory Construction Act, 1 Pa.C.S. § 1921(b), provides that when the words of a statute are clear and free from all ambiguity, the letter of the statute is not to be disregarded under a pretext of pursuing the spirit of the statute.

<sup>128</sup> See *Hidden Creek, L.P. v. Lower Salford Twp. Auth.*, 129 A.3d 602 (Pa.Cmwlth. 2015) (regarding developer’s claim of excessive tapping fees in violation of the MAA).

<sup>129</sup> 66 Pa.C.S. § 101, *et seq.*

<sup>130</sup> See 66 Pa.C.S. § 501(a) (relating to general powers), 504 (relating to reports by public utilities), 505 (relating to duty to furnish information to commission), 506 (relating to inspection of facilities and records).

<sup>131</sup> See 66 Pa.C.S. § 1301 (relating to just and reasonable rates).

<sup>132</sup> See 66 Pa.C.S. § 1501 (relating to character of service and facilities), 1502 (relating to discrimination in service), 1503 (relating to discontinuance of service), 1504 (relating to standards of service and facilities).

<sup>133</sup> See *Popowsky v. PUC*, 853 A.2d 1097 (Pa.Cmwlth. 2004), *affirmed*, 910 A.2d 38 (Pa. 2006).



*c. The formula under the Commission's Regulations*

In 1993, the Commission initiated a rulemaking related to line extensions for all regulated fixed utilities.<sup>134</sup> In the end, the Commission exercised its general authority pursuant to the Public Utility Code by promulgating regulations to set parameters for a water utility's rules for line extensions.<sup>135</sup> The Commission's water line extension regulations are mere guidance for line extensions in the other utility industries.<sup>136</sup> The Commission's line extension regulations for the electric,<sup>137</sup> natural gas,<sup>138</sup> and telephone<sup>139</sup> industries merely require that each has a line extension "rule" within their tariff.

The Commission's regulations contain directives for when water line extensions shall be funded without a customer advance and the amount of a customer advance, if any.<sup>140</sup> The regulations include an algebraic formula to determine the amount of utility (and ultimately customer) contribution.<sup>141</sup> This is intended to create, a fair, reasonable and predictable economic standard to eliminate uncertainty and reduce the litigation.<sup>142</sup>

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<sup>134</sup> See *Line Extension Order*, 27 Pa.B. 785, 799 (February 15, 1997) ("*Line Extension Order*").

<sup>135</sup> The parameters were issued under the Public Utility Code, 66 Pa.C.S. § 501, 504-506, 1301 and 1501, and were effective in February 1997. *Line Extensions*, *supra*. Note that there is no comparable provision for wastewater line extensions, although the "Model Tariff" for wastewater contains line extension provisions that track those for water lines. [http://www.puc.state.pa.us/general/onlineforms/doc/Sewer\\_Ex.doc](http://www.puc.state.pa.us/general/onlineforms/doc/Sewer_Ex.doc).

<sup>136</sup> See *Line Extension Order*, *supra*.

<sup>137</sup> 52 Pa.Code § 57.19(c).

<sup>138</sup> 52 Pa.Code § 59.27.

<sup>139</sup> 52 Pa.Code § 63.20(b).

<sup>140</sup> See 52 Pa.Code § 65.1 (relating to definitions), 65.21 (relating to the duty to make line extensions); 52 Pa.Code § 65.22 (relating to customer advance financing, refunds and facilities on private property).

<sup>141</sup> Equations are not used in the regulation related to line extensions for electric utilities (52 Pa.Code § 57.19), gas utilities (52 Pa.Code § 59.27), telephone utilities (52 Pa.Code § 63.20). In general, these regulations merely requires that, as part of its tariff, each public utility file rules setting forth the conditions under which it will make line extensions servicing applicants within its area.

<sup>142</sup> See *Line Extension Order*, *supra*.

The formula in the Commission's regulation for setting line extension fees is different from the statutory formulas for setting line extension fees in Section 5607(d)(24) of the MAA. Both the MAA<sup>143</sup> and the Commission's regulations<sup>144</sup> contain provisions related to main extensions, customer advance funding, and refunds. Using formulas, the MAA limits the costs that can be charged for water or wastewater customers for line extensions.<sup>145</sup> The actual fees required by those calculations are publicly available.<sup>146</sup> The Commission's regulations also limit the costs that can be charged to water customers,<sup>147</sup> albeit with a different formula.<sup>148</sup> The two methods cannot be reconciled.

**3. The specific statutory formulas in Section 5607(d)(24) of the MAA prevail over the general provisions in other statutes**

There is no conflict or express inconsistency between Section 5607(d)(24) of the MAA and another statute. Act 65 does not create an irreconcilable conflict with Section 5607(d)(24) of the MAA. Nothing in Act 65 explicitly embraces the same subject matter (fees for line extensions) as Section 5607(d)(24). Act 65 merely states that the provisions of the Public Utility

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<sup>143</sup> See 53 Pa.C.S. §§ 5607(a), (d), (d)(21)-(24), and (d)(30)-(31).

<sup>144</sup> 52 Pa.Code § 65.21, 65.22, 65.23.

<sup>145</sup> 53 Pa.C.S. § 5607(d)(24)(i)(A)-(C) (providing the municipal authorities have the power to charge connection fees, customer facility fees and tapping fees). A connection fee shall not exceed an amount based upon the actual cost of the connection of the property extending from the authority's main to the property line or curb stop of the property connected. 53 Pa.C.S. § 5607(d)(24)(i)(A). A customer facilities fee shall not exceed an amount based upon the actual cost of facilities serving the connected property from the property line or curb stop to the proposed dwelling or building to be served. 53 Pa.C.S. § 5607(d)(24)(i)(B). Tapping fees are charged to recover the customer's share of capital costs, and must be based on actual historical costs for includable items (and must exclude the non-includable items, such as interest, financing costs, and grants). See 53 Pa.C.S. § 5607(d)(24)(i)(C). The same cost shall not be included in more than one part of fees. In addition, municipal authorities may levy and enforce special assessments against properties served. 53 Pa.C.S. §§ 5607(d)(21)-(22).

<sup>146</sup> 53 Pa.C.S. § 5607(d)(24)(ii); PWSA Water Tariff at Part III, § G; PWSA Wastewater Tariff at Part III, § G.

<sup>147</sup> The regulations at 52 Pa.Code § 65.21, 65.22, 65.23 do not expressly apply to wastewater service.

<sup>148</sup> 52 Pa.Code § 65.21.



Code shall apply to PWSA “in the same manner as a public utility.”<sup>149</sup> Such language does not create an irreconcilable conflict, because the provisions in both statutes can both be given effect if the specific statutory provisions in the MAA are construed to result in just and reasonable rates under statutory provisions in the Public Utility Code.<sup>150</sup>

There is nothing inherently inconsistent in the statutory formula in Section 5607(d)(24) and the requirement within the Public Utility Code that “rates”<sup>151</sup> of public utilities are to be just and reasonable.<sup>152</sup> By reading Section 5607(d)(24) as an explicit statutory formula for achieving a reasonable rate for line extensions, each statutory provision can be read together and given effect.<sup>153</sup> Since the statutory provisions can be read together, there is no conflict or irreconcilable repugnancy between the statutory provisions.<sup>154</sup>

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<sup>149</sup> 66 Pa.C.S. § 3202(a). Please note that, to the extent that this language refers to other statutory provisions in the Public Utility Code, the date of the other statutory provision would be used for analysis under 1 Pa.C.S. § 1936 (relating to irreconcilable statutes passed by different General Assemblies). Under that provision of the Statutory Construction Act, where provisions of statutes enacted by different General Assemblies are irreconcilable, the statute latest in date shall prevail. 1 Pa.C.S. § 1936. With that analysis, Section 5677(d)(24) — which was enacted in 2001 — prevails over the rate/service provisions in the Public Utility Code — which were last enacted in 1978.

<sup>150</sup> There may be more than one just and reasonable means of establishing rates. *See, e.g., Duquesne Light Co. v. Barasch*, 488 U.S. 299, 315-16 (1989) (the Commission was not bound to the use of any single formula or combination of formulae in determining rates); *PUC v. Pennsylvania Gas and Water Co.*, 424 A.2d 1213, 1219 (Pa. 1989) (neither the Public Utility Code nor principles of due process require the Commission to adhere to a specific formula or methodology to determine “just and reasonable” utility rates); *Peoples Natural Gas Co. v. PUC*, 409 A.2d 446, 458 (Pa.Cmwlth. 1979) (PUC may lawfully establish just and reasonable rates within a “range of reasonableness”); *U.S. Steel Corp. v. PUC*, 390 A.2d 865, 872 (Pa.Cmwlth. 1978) (PUC has a flexible limit of judgment in exercising its administrative discretion to approve a utility’s rate structure and rate design); *Investigation Regarding Intrastate Access Charges And IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund*, PUC Docket No. I-00040105, *et al.*, Opinion and Order entered July 11, 2007; 2007 WL 2089719 (“just and reasonable” under the Public Utility Code, contemplates a range of possible outcomes).

<sup>151</sup> 66 Pa.C.S. § 102 (relating to definition of “rates”).

<sup>152</sup> *See* 66 Pa.C.S. § 1301 (relating to just and reasonable rates).

<sup>153</sup> *See* footnote 127.

<sup>154</sup> *See, e.g., Parisi v. Philadelphia Zoning Bd. of Adjustment*, 143 A.2d 360, 363 (Pa. 1958) (implied repeal of a legislative enactment can arise only where the language used in the later statute necessarily discloses an

Even if there was an irreconcilable conflict between statutory provisions, the specific statutory provisions in the MAA would prevail. Unlike the Public Utility Code, the MAA contains lengthy and detailed requirements for fees under Section 5607(d)(24) and expressly prohibits similar fees that do not follow the requirements under Section 5607(d)(24).<sup>155</sup> Since neither Act 65 nor the Public Utility Code contain specific statutory provisions on line extensions,<sup>156</sup> the specific language in the MAA prevails over the general statutory language in Act 65 and the Public Utility Code.<sup>157</sup>

In addition, Act 65 does not repeal Section 5607(d)(24) of the MAA. Nothing in Act 65 expressly repeals any statute,<sup>158</sup> nor is there an implied repeal of Section 5607(d)(24). The well-established principles regarding implied repeal are set forth in the Statutory Construction Act.<sup>159</sup>

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irreconcilable repugnancy between its provisions and those of the earlier statute so inconsistent as not to admit of any fair consonant construction of the two.).

<sup>155</sup> See 53 Pa.C.S. § 5607(d)(24)(iii).

<sup>156</sup> The actual inconsistency is between the formulas in Section 5607(d)(24) and the formula in the Commission's regulation. As discussed herein, the Commission's regulation is not a statute passed by the General Assembly.

<sup>157</sup> See 1 Pa.C.S. § 1933. Section 1933 of the Statutory Construction Act, 1 Pa.C.S. § 1933, provides that: "Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail."

<sup>158</sup> Section 3 of Act 65 of 2017 contains a general repealer provision ("All acts or parts of acts are repealed insofar as they are inconsistent with this act."). That provision does not in and of itself justify a repeal of Section 5607(d)(24). See *HSP Gaming v. City of Philadelphia*, 954 A.2d 1156, 1176 (Pa. 2008) ("The fact that ... a generic general repealer (beyond the principle of implied repeal always available under the [Statutory Construction Act]) does not provide any added weight in favor of finding an implied repeal... . [A] general repealing clause is not typically considered an implied repeal because it does not declare what the inconsistency is, but rather, it simply limits any implied repeal to only those acts that are inconsistent. Consequently, a general repealing clause is, in many ways, an express limitation on the ability to find implied repeal.") (citations omitted).

<sup>159</sup> None of the circumstances in 1 Pa.C.S. § 1971(a) or 1971(b) are applicable. Act 65 establishes oversight of certain water and sewer authorities in cities of the second class. It does not purport to revise all prior statutes upon a particular subject. 1 Pa.C.S. § 1971(a). It also does not purport to be a substitute for a former statute. *Id.* Nor can it be read as implicitly repealing any part of the MAA, which is not a local or special statute. See 1 Pa.C.S. § 1971(b).

The requirements in the Section 1971(c) of the Statutory Construction Act are not satisfied since, as discussed above, there is not an irreconcilable conflict between statutes embracing the same subject matter (i.e., line extensions).<sup>160</sup>

While acknowledging that the Public Utility Code now generally applies to PWSA's provision of adequate service at reasonable rates, there are exceptions. The Commission cannot direct PWSA to perform an action (such as charge a fee/rate) that PWSA is not legally able to do (or charge) on its own. Stated otherwise, Act 65 does not empower the Commission to direct PWSA to no longer comply with a state-wide statutory provision that sets forth the limits of an authority's power to act in a certain way. Act 65 simply provides that any person questioning the fees/rates charged by PWSA<sup>161</sup> or the adequacy, safety and reasonableness of PWSA's services,<sup>162</sup> including extensions thereof, must go to the Commission. The plain language in Act 65 does not empower PWSA to perform an action (or charge a fee/rate) that is inconsistent with the powers granted to PWSA by the General Assembly.

Act 65 also does not contemplate that the Commission is free to set rates for PWSA in any way that the Commissions chooses. By statute, the General Assembly limited the ability of the power/ability of the Commission to set rates for PWSA in, at least, two important ways. First, the Commission cannot set rates that would cause PWSA to fail to comply with PWSA's

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<sup>160</sup> 1 Pa.C.S. § 1971(c). *HSP Gaming v. City of Philadelphia*, 954 A.2d 1156, 1175 (Pa. 2008) ("Repeals by implication are not favored and will not be implied unless there be an irreconcilable conflict between statutes embracing the same subject matter. Furthermore, because implied repeals are not favored in the law, the legislative intent to repeal a statute by enacting another must be clearly shown. The reason for such a restriction is obvious: absent irreconcilability, a judicial finding of implied repeal would essentially rewrite the legislation.") (citations omitted).

<sup>161</sup> Act 65 directs the Commission to conduct rate proceedings for PWSA. *See, e.g.*, 53 Pa.C.S. § 3202(a), 3203(a), 3204(a), 3208(c).

<sup>162</sup> *See, e.g.*, 53 Pa.C.S. § 3203(a), 3204(b), 3204(c), 3205 and 3206(c).

financial obligations.<sup>163</sup> Second, the General Assembly did not explicitly repeal Section 5607(d)(24) as applied to PWSA. If the General Assembly had intended for the Commission to act in ways beyond the explicit limits imposed by the statutory formula in Section 5607(d)(24), it needed to say so explicitly, and it did not. The Act does indicate that it may not be construed “to limit the power of a city of the second class [i.e., Pittsburgh] to determine the powers and functions of [PWSA].”<sup>164</sup> Since any powers conveyed on PWSA by the City would necessarily have to be consistent with Section 5607(d)(24) of the MAA, this section also appears to support the intention of the General Assembly to not interfere with or add to the specific duties and requirements imposed on PWSA in the MAA.

If one assumes *arguendo* that the Commission has the power to direct PWSA to perform an action (such as charge a fee/rate) that PWSA is not legally able to do (or charge) on its own, then the Commission could direct PWSA to no longer comply with: (a) legal limitations imposed by the General Assembly on PWSA, such as financial<sup>165</sup> or procurement<sup>166</sup> requirements; and/or (b) state-wide environmental laws. That would be an absurd result, which would violate the principles of statutory interpretation<sup>167</sup> and would, in effect, enable the Commission to rewrite the MAA as applied to PWSA (so as to expand PWSA’s statutory powers or to remove statutory limitations on PWSA’s ability to act). To avoid such results, the Commission should conclude

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<sup>163</sup> 53 Pa.C.S. § 3208(c).

<sup>164</sup> 66 Pa.C.S. § 3208(a).

<sup>165</sup> *See* 53 Pa.C.S. § 5611, 5612.

<sup>166</sup> *Cf.* 53 Pa.C.S. § 5614 (Competition in award of contracts) *with* 66 Pa.C.S. § 513 (Public letting of contracts).

<sup>167</sup> *See* 1 Pa.C.S. § 1922(1), (2).

that the Commission lacks the power to direct PWSA to charge a rate that would violate Section 5607(d)(24).

**4. The statutory formulas in Section 5607(d)(24) of the MAA prevail over the formula in the Commission's regulation**

The statutory formulas in Section 5607(d)(24) of the MAA prevail over the formula in the Commission's regulation for the following reasons:

First, the Commission's regulations cannot be interpreted as superseding Section 3204(b) of the MAA because the Commission's regulations are not a statute, like the MAA.<sup>168</sup> The regulations were promulgated by the Commission, and, as such, are not a "statute," as that term is defined in statutory and case law.<sup>169</sup> Statutes always supersede administrative regulations.<sup>170</sup> Accordingly, the language in a regulation should not be used so as to render words within a statute to be superfluous and meaningless, since the General Assembly is presumed to have intended to avoid that result.<sup>171</sup> So, any suggestion that the Commission can by regulation supersede provisions in state-wide statutes lacks legal support.<sup>172</sup>

Second, even if the Commission's regulation is treated as a statute,<sup>173</sup> specific statutory provisions in the MAA would prevail. Here, the statutory formula in Section 5607(d)(24) was

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<sup>168</sup> See *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa.Super. 2002).

<sup>169</sup> *Id.*; 1 Pa.C.S. § 1991.

<sup>170</sup> See *Commonwealth v. Kerstetter*, 62 A.3d 1065, 1069 (Pa.Cmwlth. 2013), *affirmed*, 94 A.3d 991 (Pa. 2014) ("It is axiomatic that a statute is the law and trumps an administrative agency's regulations."), *citing Joyce Outdoor Adver., LLC v. Dep't of Transp.*, 49 A.3d 518, 524 (Pa.Cmwlth. 2012).

<sup>171</sup> *Philadelphia Gas Works v. Commonwealth*, 741 A.2d 841 (Pa.Cmwlth. 1999), *affirmed*, 757 A.2d 360 (Pa. 2000) (*per curiam*); *Habecker v. Nationwide Ins. Co.*, 299 Pa. Super. 463, 445 A.2d 1222 (Pa. Super. 1982).

<sup>172</sup> See *Greenberg v. Bradford*, 248 A.2d 51 (Pa. 1968) (wherein the court rejected the contention that although Philadelphia could, by local regulation, supersede statewide statutes).

<sup>173</sup> Nothing supports the concept that a regulation promulgated by any agency should be treated as the equivalent of a statute for the purposes of reconciling two statutes. That being said, it is well recognized that a properly adopted substantive rule establishes a standard of conduct which has the force and effect of

enacted last<sup>174</sup> and prevails over the formula in the Commission's regulations.<sup>175</sup> That result is supported by the intent of the General Assembly. If the General Assembly had intended to apply the formula in the Commission's regulations to municipal authorities, it could have done so (since the regulation had been in existence for about 4 years). It did not. The General Assembly created a specific and exclusive statutory formula for municipal authorities. So, there is no indication that the General Assembly contemplated that formulas in Section 5607(d)(24) would be negated by an earlier formula found in the Commission's regulations.

It is anticipated that I&E (or others) may argue that the intent of the General Assembly was, *inter alia*, to have PWSA comply with all of the Commission's regulations promulgated under the Public Utility Code. That statement is not precisely correct. The stated intent, as stated above, is to have PWSA comply with the applicable provisions of the Public Utility Code.<sup>176</sup> In enacting Act 65/Chapter 32, the General Assembly noted that compliance was not mandated for every provision in the Public Utility Code,<sup>177</sup> and there is no such explicit mandate in Chapter 32. If the intent was to mandate compliance with each and every provision as well as all regulations, the General Assembly would not have expressly included a waiver provision in

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law. See, e.g., *Marcellus Shale Coalition v. Department of Environmental Protection*, No. 573 M.D. 2016 Opinion issued July 22, 2019; 2019 Pa.Comm.w. LEXIS 672, 2019 WL 3268820. The "force and effect" of law is generally used to describe (a) the existing of a standard of conduct (binding norm), which bind the agency equally with others. See, e.g., *Commonwealth v. State Conf. of State Police Lodges of FOP*, 520 A.2d 25 (Pa 1987); *Herdelin v. Abe Green-Board*, 328 A.2d 552 (Pa.Cmwlth. 1974); and, (b) the difference between "regulations," which are binding, and "policy statements," which are not binding. Accordingly, that concept does not mean that a regulation should be treated as the equivalent of a statute when sorting out conflicting directives.

<sup>174</sup> See footnote 2 (MAA enacted in 2001) and footnote 134 (regulation promulgated in 1997).

<sup>175</sup> See footnote 149 (regarding 1 Pa.C.S. § 1936, irreconcilable statutes passed by different General Assemblies controls general) and footnote 157 (regarding 1 Pa.C.S. § 1933, particular controls general). In addition, it would be absurd for an earlier (1997) regulation/provision to repeal/supersede a later (2001) provision. See footnotes 159 and 160 (regarding 1 Pa.C.S. § 1977, implied repeal by later statute).

<sup>176</sup> See 53 Pa.C.S. § 3202, 3204(b), 3209.

<sup>177</sup> See 53 Pa.C.S. § 3202(b), 3204(b), 3208(c).

Chapter 32.<sup>178</sup> In addition, the “Compliance Plan” provision<sup>179</sup> in Chapter 32 does mandate that regulations promulgated under the Public Utility Code supersede the MAA. That provision merely directs compliance with the applicable rules, regulations and orders of the Commission. Such language does not mandate that the Commission’s regulations control over the statutory provisions in the MAA. This is especially true since (a) the statutory provisions in the Public Utility Code may be waived<sup>180</sup> and the Commission’s regulations may also be waived;<sup>181</sup> and (b) there is express language stating that the statutory formula in Section 5607(d)(24) cannot be legally circumvented by any municipal authority, including PWSA.

Third, there is no legal support for the contention that the Commission can by regulation change the powers conferred upon municipal authorities by the General Assembly. In Chapter 32, the General Assembly expressly indicated that PWSA was expected to comply with “applicable rules, regulations and orders of the Commission.”<sup>182</sup> The formula in the Commission’s regulations is not applicable, since fees are specifically (and exclusively) provided for in Section 5607(d)(24). That being said, using the formula under the Commission’s regulations instead of the exclusive (statutory) fees provided for Section 5607(d)(24) would have the legal (and practical) effect of requiring PWSA to charge fees that are not consistent with the statutory powers conferred upon PWSA. This is beyond the Commission’s authority to accomplish.

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<sup>178</sup> See 53 Pa.C.S. § 3202(b).

<sup>179</sup> 66 Pa.C.S. § 3204(b).

<sup>180</sup> See 53 Pa.C.S. § 3202(b).

<sup>181</sup> The Commission may waive requirements in its own regulations. See 52 Pa.Code § 1.91.

<sup>182</sup> 66 Pa.C.S. § 3204(b).



5. **Even if the Commission finds that the Authority is bound by PUC Line Extension Regulations, it should waive compliance with the formula in the Commission's regulation**

In the event that the Commission determines that the formula in the Commission's regulations applies to PWSA, then PWSA submits that the Commission should, nonetheless, waive compliance with the Commission's regulation so as to permit PWSA to continue to use the statutory formula in Section 5607(d)(24) of the MAA.

The Commission has the authority to waive its own regulation.<sup>183</sup> Moreover, for PWSA, the Commission has been granted even more expansive authority to "supersede or waive" any provision of Title 66 at the request of PWSA. Since the Commission's line extension regulations are promulgated pursuant to its authority in the Public Utility Code, it has even greater authority to waive existing regulations to accommodate PWSA's special circumstances.

The requested waiver is reasonable. There is no express statutory provision in the Public Utility Code prohibiting the imposition of line extension fees as calculated under the statutory formulas in Section 5607(d)(24). PWSA has been following the statutory formula in Section 5607(d)(24) of the MAA since its enactment. The results of the formula were set forth in PWSA's Official Prior Tariff<sup>184</sup> and are set forth in PWSA's current Commission-approved water Tariff.<sup>185</sup> It follows that the results of the statutory formula are presumed to be reasonable,

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<sup>183</sup> See 52 Pa.Code § 1.91.

<sup>184</sup> PWSA's prior tariff, which was effective from March 30, 2018 to March 1, 2019, is available at: [http://www.puc.state.pa.us/about\\_puc/consolidated\\_case\\_view.aspx?Docket=M-2018-2640802](http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=M-2018-2640802)

<sup>185</sup> PWSA's current Commission-approved water tariff is available at: <http://www.puc.state.pa.us/pcdocs/1607874.pdf>. That tariff was effective on March 1, 2019, see March 6, 2019 Secretarial Letter entered at Docket Number R-2018-3002645 (<http://www.puc.state.pa.us/pcdocs/1608677.docx>).

PWSA's current Commission-approved wastewater tariff is available at: <http://www.puc.state.pa.us/pcdocs/1607875.pdf>. That tariff was effective on March 1, 2019, see March 6, 2019 Secretarial Letter entered at Docket Number R-2018-3002647 (<http://www.puc.state.pa.us/pcdocs/1608676.docx>).



have the full force of law, and are binding on PWSA and its customers.<sup>186</sup> Since PWSA has express legislative power to charge line extension fees, it is reasonable to permit PWSA to continue to charge fees consistent with the power delegated to PWSA under Section 5067(d)(24), subject to the Commission's oversight.

The requested waiver is also in the public interest. The claim of an individual seeking the line extension must be balanced against the right of the Authority to remain financially viable as well as the right of existing customers to avoid subsidizing uneconomic line extensions for new customers. The formulas in Section 5607(d)(24) balances these interests, as does the formula in the Commission's regulation. However, they do so differently. The Commission's regulation places a larger burden upon the utility. That balance used in the Commission's regulation is not appropriate for PWSA, which is a governmental entity, serves a largely urban area of Pittsburgh, and needs to make significant capital investments in the foreseeable future in order to be able to continue to provide safe and adequate service.

In addition, the reason for Commission oversight over rates charged by utilities is to prevent utilities from imposing excessive rates. That concern simply is not present with respect to line extension fees charged by PWSA because the express method of calculation is set out in great detail in Section 5607(d)(24). As a specific directive of the General Assembly, it must be presumed to be just and reasonable. Accordingly, the Commission should either recognize that, in this specific instance, PWSA must continue to apply the exclusive formula for line extension

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<sup>186</sup> An approved tariff provision is presumed to be just and reasonable, and the challenging party bears the burden of proving otherwise. The claimant must prove that its rates are unreasonably high and that the rates of other customers are unreasonably low. *PUC v. Pennsylvania-America Water Co.*, Docket Nos. R-00943231, *et al.*, 172 Pa. PUC 160, 1996 Pa. PUC LEXIS 141 at 17 (June 6, 1996); *see also Building Owners and Managers Association v. PUC*, 470 A.2d 1092, 1096 (Pa.Cmwlth. 1984).

charges in the MAA or grant a waiver of the Commission's general line extension regulations and permit PWSA to adhere to the MAA formula on a "waiver" basis.

#### **D. PWSA'S RESIDENCY REQUIREMENT**

In Directed Question No. 80, the Commission stated that the parties should discuss whether employment with PWSA is subject to a residency requirement, and if so, how. If there is a residency requirement, Directed Question No. 81 directs the parties to discuss how this requirement is consistent with PWSA's safety and reliability obligations under the Public Utility Code<sup>187</sup> and the diversity objectives of the "Diversity at Major Jurisdictional Utility Companies-Statement of Policy."<sup>188</sup>

Following the City's Home Rule Charter, which contains a requirement for persons employed by the City to live in the City (except for police officers who have been exempted by the Supreme Court of Pennsylvania), the PWSA Board has adopted a domicile policy requiring PWSA employees to reside in the City. The policy applies to all employees except those specifically exempted from the domicile requirements by the PWSA's Executive Committee.<sup>189</sup>

With respect to safety and reliability obligations, PWSA is well aware that Section 1501 of the Public Utility Code obligates public utilities to furnish and maintain adequate, efficient, safe and reasonable service and facilities and to make repairs and improvements that are necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public. Further, such service is required to be reasonably continuous and without

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<sup>187</sup> 66 Pa.C.S. §1501.

<sup>188</sup> 52 Pa. Code §§ 69.801-69.809.

<sup>189</sup> PWSA St. C-2 (Lestitian) at 14.

unreasonable interruptions or delay.<sup>190</sup> Further, PWSA is familiar with the Commission's Policy Statement addressing Diversity at Major Jurisdictional Utility Companies, which encourages major public utilities to incorporate diversity in their business strategy in connection with the procurement of goods and services and to improve diversity within the workplace.<sup>191</sup>

PWSA acknowledges that the residency requirement makes it challenging to meet these obligations. While PWSA has many dedicated and qualified staff members and takes efforts to train new staff in the necessary areas of expertise, the domicile requirements restrict PWSA's ability to attract and retain capable and talented individuals with the necessary skills, as well as PWSA's ability to fulfill diversity goals. An important reason that the domicile requirement is problematic is that only 300,000 people live in the City, compared to 2.36 million people in the Pittsburgh metropolitan area. This means that PWSA only has access to less than 16 percent of this population unless the individuals are willing to relocate to the City, which presents its own challenges, especially for families with school-age children.<sup>192</sup> Further, the overall market conditions for professionals and trade workforce is exacerbated by the current economy, as well as the billions in local and regional utility infrastructure investments. Qualified staff shortages and higher salaries result from this regional competition for desirable talent.

Also, the lack of qualified water treatment operators, plumbers, laboratory staff, project managers, welders, electricians and mechanics has required PWSA to engage consultants and operating staff who work full time as contracted workers. In addition, PWSA engages specialty contractors to address everyday maintenance and operational needs. These contractors comprise

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<sup>190</sup> 66 Pa.C.S. § 1501; PWSA St. C-2 (Lestitian) at 14.

<sup>191</sup> 66 Pa. Code §§ 69.801-69.809.

<sup>192</sup> PWSA St. C-2 (Lestitian) at 15-16.

more than 10% of PWSA and are engaged to work with PWSA staff at a 150% to 200% cost premium. The cost premium has added more than \$2 million per year just to PWSA's annual non-unionized workforce cost. Also, the contractors and consultants that become familiar with PWSA's operations may want to join the workforce but are then unable to become employees unless the Board's Executive Committee approves a domicile exemption. The domicile limitations make it particularly difficult for PWSA to have redundancy among its staff.<sup>193</sup>

Nonetheless, PWSA is taking all steps that it can to address the challenges presented by the residency requirement. PWSA is working to stabilize its workforce through hiring of permanent workers in every position to the extent they are available. Unfortunately, PWSA must continue to engage consultants as full-time staff as well as contract with Peak Staffing Services to temporarily hire project managers who do not reside in the City; in fact, one of these professional engineering staff has worked as a contractor at PWSA for more than 16 years. This initiative has allowed PWSA to bring staff as permanent employees who have the requisite technical skills and experience that PWSA needs. If any contracted staff are effective in fulfilling their job responsibilities, PWSA attempts to convert them from temporary to permanent employees, by paying a "royalty" to the staffing firm.<sup>194</sup> PWSA has had modest success in having specified individuals accept positions exempted from the domicile requirement and hiring them as permanent PWSA staff.

I&E has recommended that PWSA eliminate the residency requirement, citing concerns about PWSA's obligations as a regulated public utility.<sup>195</sup> However, I&E has pointed to no

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<sup>193</sup> PWSA St. C-2 (Lestitian) at 16.

<sup>194</sup> PWSA St. C-2R (Lestitian) at 18-19.

<sup>195</sup> I&E St. 2 (Patel) at 36-41.

specific concerns regarding noncompliance linked to the residency requirement or presented any evidence to show that the this requirement is causing PWSA to be out of compliance with any provisions of the Public Utility Code or Commission regulations.

Typically, it is within the purview of a public utility to exercise reasonable judgment in choosing how it will meet its statutory and other legal obligations. Under long-standing precedent, the Commission may not act as a “super board” of directors<sup>196</sup> or micromanage the day-to-day operations of the utilities under its jurisdiction.<sup>197</sup> However, PWSA recognizes that this deference is not unlimited, as the Commission pointed out earlier in this proceeding, and that the Commission will not defer to the PWSA Board when decisions affect compliance with the Public Utility Code or Commission regulations.<sup>198</sup> To the extent that the Commission finds evidence of inadequate service caused by the residency requirement, PWSA is aware that the Commission may direct its elimination.

## **E. LEAD REMEDIATION ISSUES**

### Introduction

Before discussing the remaining litigated issues regarding lead remediation, it is important to understand them in the context of PWSA’s overall lead remediation efforts.

Because of concerns about the health effects of lead,<sup>199</sup> federal and state drinking water regulations require that public drinking water suppliers regularly test for contaminants, such as

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<sup>196</sup> See *Bell Tel. Co. of Penna. v. Driscoll*, 118 A.2d 912, 916 (Pa. 1941); *Metropolitan Edison Co. v. Pa. PUC*, 437 A.2d 76 (Pa.Cmwlth. 1981).

<sup>197</sup> See *Pa. PUC v. Philadelphia Electric Co.*, 501 Pa. 153, 159, 460 A.2d 734 (1983).

<sup>198</sup> FIO at 17.

<sup>199</sup> See PWSA Exh. RAW/C-7 (PWSA 40 Year Plan) at 4-27.

lead and copper.<sup>200</sup> The goal of the “lead and copper rules” is to minimize levels of these metals in drinking water, primarily by reducing water corrosivity.<sup>201</sup> The regulations establish action levels of 0.015 milligram per liter (mg/l) for lead and 1.30 mg/l for copper based on 90th percentile levels of tap water samples.<sup>202</sup> An action level exceedance is not a violation but can trigger other requirements that include corrosion control treatment, public education, and lead service line replacement.<sup>203</sup>

There is no detectable lead in PWSA’s water when it leaves the treatment plant and travels through PWSA’s water mains.<sup>204</sup> However, lead can enter drinking water through lead services lines.<sup>205</sup> For PWSA’s service lines that are smaller than one inch – virtually all residential properties – services lines have a public-side (which is owned by PWSA<sup>206</sup>) and a private-side (which is owned by the property owner<sup>207</sup>). For all of PWSA’s non-residential

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<sup>200</sup> 40 CFR Part 141 Subpart I and 25 Pa.Code § 109.1101 to 109.1108, collectively the “lead and copper rules” or “LCR.”

<sup>201</sup> PWSA Exh. RAW/C-7 (PWSA 40 Year Plan) at 4-27.

<sup>202</sup> 25 Pa.Code § 109.1102(a)(1), (2); PWSA Exh. RAW/C-7 (PWSA 40 Year Plan) at 4-27.

<sup>203</sup> See 25 Pa.Code § 109.1102(b), 109.1104; (PWSA Exh. RAW/C-7 (PWSA 40 Year Plan) at 4-27.

<sup>204</sup> PWSA Hearing Exh 1, Appendix 1 (Compliance Plan) at 119; PWSA Rate Case, PWSA St. 1-R (Weimar) at 14.

<sup>205</sup> PWSA Hearing Exh 1, Appendix 1 (Compliance Plan) at 119; PWSA Rate Case, PWSA St. 1-R (Weimar) at 14. The term “service line” is defined as “Water lines that connect the water service of a residential or non-residential property to the Authority’s Mains and that deliver water from the Mains to one or more buildings, premises, or facilities. Service Lines may be Authority Service Lines, Customer Service Lines, or Party Service Lines.” PWSA Tariff Water (PUC No. 1) at Part II (definitions). Please note that lead can also enter drinking water through household plumbing. PWSA Hearing Exh 1, Appendix 1 (Compliance Plan) at 119. PWSA does not own any household or internal plumbing within the homes or buildings of PWSA’s customers. PWSA also considers galvanized iron piping a concern because galvanized iron lines were typically jointed to lead public service lines and lead from the public side of a lead pipe can leach into a private galvanized iron service line. PWSA St. C-1R Supp (Weimar) at 4.

<sup>206</sup> This part of a service line is called the “Authority service line.” PWSA Tariff Water (PUC No. 1) at Part II (definitions).

<sup>207</sup> This part of a service line is called the “Customer service line.” PWSA Tariff Water (PUC No. 1) at Part II (definitions).

customers, there is only a private-side service line, since the service line is owned entirely by the property owner.<sup>208</sup>

In 2018, it was **estimated** that there were about 12,300 residential public lead service lines within PWSA's water system.<sup>209</sup> PWSA is working to update/complete its inventory of residential lead service lines by December 31, 2020.<sup>210</sup> While that inventory is not yet complete, the number of residential customers potentially with public lead service lines (after 2020) is estimated to be around 6,000,<sup>211</sup> and the number of residential private lead service lines could be between 8,000 and 20,000.<sup>212</sup>

PWSA has issued several Policies and Action Plans, in coordination with the Pennsylvania Department of Environmental Resources ("PADEP") to take steps to reduce lead levels. Corrective (or remedial) actions to mitigate the release of lead from lead service lines to drinking water include corrosion control, public education and the physical replacement of the lead service lines.<sup>213</sup> PWSA started corrosion control (using orthophosphate), once it obtained

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<sup>208</sup> PWSA Tariff Water (PUC No. 1) at Part III, Section B, Rule 12.a ("all Non-Residential service lines, regardless of diameter, are the responsibility of the property owner, including the section from the Curb Stop, the Curb Box, and that portion of the Water Service Line running from the Curb Stop to the Water Main."). PWSA has identified four "public-side" galvanized iron service lines at non-residential properties, but they are in actuality privately owned service lines in the public right-of-way. *See* OSBA Exhibit I-5.

<sup>209</sup> PWSA Hearing Exh. 3 (LTIIP) at 28. Based on the March 29, 2018 Updated Materials Evaluation report, there are an estimated 12,218 lead service lines within the Authority's water system. *Id.* PWSA has yet to perform its inventory of non-residential service line materials. PWSA St. C-1R (Weimar) at 60-61; PWSA C-1SD (Weimar) at 24; PWSA Exh. RAW/C-44; PWSA St. No. C-1R-Supp. (Weimar) at 2, 5-6; PWSA St. No. C-1RJ (Weimar) at 4, 16-17. Once the residential inventory is completed in 2020, PWSA will be working to complete an inventory of non-residential lead service lines by December 31, 2022. *Id.*

<sup>210</sup> PWSA St. C-1R (Weimar) at 60-61; PWSA C-1SD (Weimar) at 24; PWSA Exh. RAW/C-44; PWSA St. No. C-1R-Supp. (Weimar) at 2, 5-6; PWSA St. No. C-1RJ (Weimar) at 4, 16-17;

<sup>211</sup> PWSA Hearing Exh. 3 (LTIIP) at Table 2-7 (residential lead service lines remaining after 2020: 5989).

<sup>212</sup> *See* UNITED St. C-1SUPP-R (Miller) at 5 and at Appendix A, 1.

<sup>213</sup> *See* UNITED St. C-2SUPP-R (Welter), Appendix A at 17.



the required approvals from PADEP as well as local officials.<sup>214</sup> PWSA has been engaged in public education,<sup>215</sup> and has been replacing lead service lines owned by PWSA.<sup>216</sup> Under other programs established by it, as long as the property owner consented, PWSA has also replaced the private-side lead service lines when PWSA was replacing the public-side of the lead service lines.<sup>217</sup> PWSA is committed to efforts to encourage private-side line replacements in order to reduce the number of partial (public-only) lead service line replacements.<sup>218</sup>

PWSA has committed to extraordinary efforts and the expenditure of hundreds of millions of dollars in order to remediate lead on its system. It has done this in part in response to a PADEP water quality mandate<sup>219</sup> and a 2017 Consent Order and Agreement<sup>220</sup> (“Lead COA”) as well as part of a voluntary effort – approved by PWSA’s Board in PWSA’s 2018 and 2019 Lead Service Line Replacement Policies<sup>221</sup> – to do significantly more than required by regulation<sup>222</sup> or the Lead COA.

The Lead COA lays out actions for PWSA to take if its water sampling shows that lead levels exceed the “Lead Action Level” under PADEP’s “Lead and Copper” Regulations. The

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<sup>214</sup> PWSA Hearing Exh. 3 (LTIP) at § 8.2; Partial Settlement at § III.M.2.c, III.XX; PWSA St. C-1RJ (Weimar) at 17-18; PWSA St. C-1R-Supp (Weimar) at 7; PWSA St. C-1SD (Weimar) at 22-23; PWSA St. C-1R (Weimar) at 2-3, 37-38; PWSA St. C-1 (Weimar) at 48-49.

<sup>215</sup> PWSA Hearing Exh. 3 (LTIP) at § 2.2, 2.2.1, 2.2.2; PWSA Exh. RAW/C-46 (July 2019 Policy).

<sup>216</sup> PWSA Hearing Exh. 3 (LTIP) at § 2.2, 2.2.1, 2.2.2; PWSA Exh. RAW/C-46 (July 2019 Policy).

<sup>217</sup> Changes to state law by the General Assembly granted PWSA the legal authority to fund and perform lead service line replacements on private property with the property owner’s consent. *See* 72 P.S. § 1719-E(c), (d); 66 Pa.C.S. § 1311(b).

<sup>218</sup> PWSA Hearing Exh. 3 (LTIP) at § 8.2.

<sup>219</sup> 25 Pa.Code § 109.1101 to 109.1108, collectively the “lead and copper rules” or “LCR.”

<sup>220</sup> UNITED St. 4 (Welter) at Appendix D.

<sup>221</sup> PWSA Exhibit RAW/C-46 (July 2019 Policy); PWSA Hearing Exhibit 1 at Appendix C (LTIP), Appendix C (2018 Policy).

<sup>222</sup> *See* footnote 219.



Lead COA also requires implementation of a corrosion control program.<sup>223</sup> It further contains deadlines for completing a lead service line system inventory<sup>224</sup> and performing lead service line replacements.<sup>225</sup> Specifically, with regard to replacements, PWSA agreed to replace at least 7% of its existing public lead service lines in each year in which its lead levels in the prior six months fall above the “Action Level,” as well as to provide customer notice, follow-up testing and public education whenever it exceeds the Action Level.<sup>226</sup> Finally, PWSA agreed to a “Community Environmental Project” in which PWSA will spend up to \$1.8 million to replace private lead service lines for homeowners; this is in addition to the other replacements agreed to in the Lead COA.<sup>227</sup>

The July 2019 PWSA Lead Remediation Policy contains significant additional steps that PWSA is taking voluntarily to respond to what it believes is the sentiment in the community and among policymakers to go above and beyond what is required by environmental regulations or any federal or state mandates with regard to lead.<sup>228</sup> In that Policy, PWSA elected to go well beyond any “post-Action Level” obligation and to replace a residential customer-owned private side lead line whenever PWSA replaces the public side, and to do so without directly charging

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<sup>223</sup> Lead COA at § 3.b.

<sup>224</sup> Lead COA at § 3.c.

<sup>225</sup> Lead COA at § 3.d, 3.e. In addition, the Lead COA allows PWSA to direct up to 75% of the civil penalty (under the Lead COA) toward private-side lead service line replacements for low-income homeowners in its service area (i.e, the “Community Environmental Project” or “CEP”). Consistent with the Lead COA, funding for the CEP ends in November 2020. The CEP targets private lead service line replacements for households with income levels below 250% of the federal poverty level, as adjusted annually. July 2019 Policy § 4.2.b. The Lead COA allows PWSA to apply up to \$1.8 million of what would have been a civil penalty to the CEP. PWSA St. C-1SD (Weimar) at 27-28, 32-33. PWSA St. C-1 (Weimar) at 56, 60-62. Whatever portion of the \$1.8 million PWSA does not spend by November 2020 PWSA will pay to the PADEP as a fine. Lead COA at § 4.c; PWSA St. C-1 (Weimar) at 55; UNITED St. C-3 (Lanphear) at 39.

<sup>226</sup> See PWSA St. C-1RJ (Weimar) at 2; Lead COA at § 3.e, 3.g.

<sup>227</sup> Lead COA, § 4.

<sup>228</sup> PWSA St. C-1SD (Weimar) at 25.

the customer.<sup>229</sup> PWSA has also determined to reimburse residential customers when they decide to replace their line on their own, using a sliding scale of reimbursement that will have PWSA pay all the cost for low and moderate income customers and provide at least a \$1,000 stipend even to non-low/moderate income customers.<sup>230</sup> PWSA believes that this Policy fairly balances the needs and concerns of the community with PWSA's other substantial construction and operational obligations.<sup>231</sup>

Unfortunately, these extraordinary efforts apparently are not enough for the opposing parties, who insist that PWSA do even more. They advocate that PWSA be ordered to: (1) pay 100% of the cost of replacing private-side lead service lines when a residential customer who is not currently slated to have his or her line replaced by PWSA requests such replacement; (2) to continue a neighborhood based replacement program in addition to lead service line replacement as part of its Small Diameter Water Main Replacement ("SDWMR") program; and (3) to provide a \$1,000 stipend to each non-residential customers in order to subsidize the replacement of any lead or galvanized iron private service lines serving commercial, industrial and hospitals/educational institutions.

The Commission should not order PWSA to undertake any of these requested additional initiatives for the following reasons:

– **First**, all of these demands are for the purposes of remediating PWSA's water quality by further reducing or eliminating lead levels in a customer's tap water. But it is beyond cavil that the Commission does not have jurisdiction over water quality issues. Those issues are

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<sup>229</sup> PWSA St. C-1SD (Weimar) at 25-26. The cost of this program is, and will continue to be reflected in PWSA's water rates.

<sup>230</sup> PWSA St. C-1SD (Weimar) at 26.

<sup>231</sup> PWSA St. C-1SD (Weimar) at 26.

reserved for the PADEP, and there has been no allegation that PWSA is presently out of compliance with those PADEP regulatory requirements.<sup>232</sup>

— **Second**, the issues here have to do exclusively with private water service lines. PWSA has no legal or regulatory obligation to repair or replace a customer's private service line, and the Public Utility Code makes clear that any such effort by a water utility is at the discretion of the utility.

— **Third**, PWSA has already made considerable efforts to remove public and private side lead lines in its system. Pursuant to the Lead COA, PWSA has replaced 7% of its known public lead lines in its system and has initiated a Community Environmental Project in which it has replaced without charge lead private service lines for low income customers.<sup>233</sup> Going forward, the Authority has voluntarily committed to formulating a plan that will, over time, completely eliminate lead in its water system (not including private customers who simply refuse to have their private lines replaced – whether free of charge or with a stipend or non-residential customers who may replace their galvanized iron lines at their expense). Through the end of the 2019 LSLR Program, PWSA will have replaced over 6,100 public side lines<sup>234</sup> and 2835 private-

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<sup>232</sup> 25 Pa.Code § 109.1101 to 109.1108. For example, 25 Pa. Code § 109.1102(a), establishes an action level for lead at 0.015 mg/L, and provides that the action level is exceeded when the concentration in more than 10% of the tap water samples collected during the monitoring period (known as the 90th percentile amount) is greater than the action level; 25 Pa. Code § 109.1107(d)(1) requires a system such as PWSA that exceeds the lead action level when conducting lead and copper tap monitoring to initiate lead service line replacement; 25 Pa. Code § 109.1107(d)(2) requires water suppliers that exceed the lead action level to replace annually at least 7% of the initial number of lead service lines in place in their system at the beginning of the first year of replacement; and, under 25 Pa. Code § 109.1107(d)(4), a water supplier is required to replace the system owned portion of the lead service line.

<sup>233</sup> See footnote 225.

<sup>234</sup> PWSA Hearing Exh. 3 (LTIIP) at 28, Table 2-7 (from 2016 through 2019).

side lines<sup>235,236</sup> it has committed to a SDWMR Program that will eventually remove 100% of the residential public side lead service lines.<sup>237</sup> PWSA has a current goal of 2026 to accomplish this<sup>238</sup> and PWSA has agreed with the Parties that by December 2020, it will complete its estimate of the total number of lead service lines in its system, and, by March 31, 2021 will reevaluate its current timeline and formulate a revised plan and timeline for removing all remaining residential lines and establish a new end point for complete removal.<sup>239</sup>

**In addition,** PWSA and the Parties were able to agree on the details of most other issues associated with lead remediation, including: the details of completing the inventory of all public and private-side lead lines,<sup>240</sup> interior plumbing inspections (when PWSA replaces a water meter),<sup>241</sup> a process for testing the effects of meter replacement on lead levels (and an action plan if unacceptable lead levels are found),<sup>242</sup> procedures and standards for tap water testing and filter distribution, as well as bottled water and flushing assistance for extremely high lead levels, and an ongoing process of consulting with an advisory group – the Community Lead Response

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<sup>235</sup> PWSA Hearing Exh. 3 (LTIIP) at 28 (through 2019).

<sup>236</sup> See footnote 311 for details on the costs of the 2019-2020 lead service line replacements for several neighborhoods within the City. In addition, Table 2-8 of the LTIIP presents the projected current and “accelerated” SDWMR program costs. PWSA Hearing Exh. 3 (LTIIP) at 29. It should be noted that in 2018, PWSA completed 3,374 public and private replacements. PWSA St. C-1R at 39. In 2018, PWSA replaced 2,050 public side lead service lines and 1,324 private side service lines. PWSA C-1 (Weimar) at 53. The cost of replacements under PWSA’s 2018 Neighborhood based contracts program was \$118,090.05. PWSA St. C-1 (Weimar) at 53-54. Those costs do not include: (1) the 2017 Program; (2) Individual Lead Service Line Replacement (ILSLR) Contracts; (3) Filters and Pitchers; and (4) Other Miscellaneous Costs not covered by the consulting or construction firms (i.e. phones, computers, etc.). *Id.*

<sup>237</sup> PWSA Hearing Exh. 3 (LTIIP) at 28, Table 2-8.

<sup>238</sup> PWSA Hearing Exh. 3 (LTIIP) at 28, Table 2-8.

<sup>239</sup> Partial Settlement at § III.QQ.2; III.QQ.3.

<sup>240</sup> Partial Settlement at § III.QQ.3.

<sup>241</sup> Partial Settlement at § III.RR.

<sup>242</sup> Partial Settlement at § III.TT.1, III.TT.3.

Advisory Committee (“CLRAC”) – made up on the Parties to this case and other community members.<sup>243</sup>

Importantly, PWSA’s voluntary, comprehensive plan to address lead in PWSA residential service lines goes well beyond any legal or regulatory requirements set forth in the Lead COA and well beyond what will be necessary from a health or safety standpoint, since PWSA’s corrosion control plan using orthophosphate will very shortly reduce lead levels in residential tap water to well below PADEP actions levels and likely to virtually non-detectable levels.<sup>244</sup>

Notwithstanding all of these efforts, the parties continue to demand that the Authority do “more,” with apparent disregard for the Commission’s jurisdictional authority to order these additional actions, the health or safety need for the additional actions, or the additional cost that would be imposed upon PWSA ratepayers to accomplish their view of an ideal lead remediation strategy. Several of the Parties (I&E, OCA and UNITED, referred to in this Section of the Brief as the “Opposing Parties”) insist that PWSA must provide “free” private-side line replacement to all residential customers who wish to have their line replaced (and not wait for PWSA to replace the water mains on his/her street – in which case PWSA will replace at no direct cost to the property owner).

Moreover, UNITED (at least) has insisted that, in addition to PWSA’s SDWMR Program, through which PWSA will, over time, replace all known public-side and all residential private-side lead and galvanized iron lines (assuming that the customer consents to the replacement and the replacement is technically feasible), the Authority must also engage in

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<sup>243</sup> Partial Settlement at § III.TT, III.UU.

<sup>244</sup> See Partial Settlement at § III.M.2.c, III.XX; PWSA St. C-1RJ (Weimar) at 17-18; PWSA St. C-1R-Supp (Weimar) at 7; PWSA St. C-1SD (Weimar) at 22-23; PWSA St. C-1R (Weimar) at 2-3, 37-38; PWSA St. C-1 (Weimar) at 48-49.

additional public and private-side removal efforts in certain targeted communities, with the apparent goal of achieving 100% removal more quickly than that which will occur pursuant to PWSA's SDWMR Program. As will be explained below, these demands should be rejected because, again, the Commission does not have authority to order them, they are not necessary from a health and safety standpoint, and they will impose additional, unnecessary costs on PWSA and its ratepayers who are already bearing a heavy burden for remediation.

Finally, the Commission should reject the OSBA's demand<sup>245</sup> that PWSA provide a \$1,000 "stipend" to commercial and industrial customers that want to replace their private lead or galvanized iron service line. The Commission does not have the authority to order PWSA to replace private service lines for water quality purposes, and the essential rationale for PWSA's decision to replace residential private side lead service lines when the public side is replaced – to avoid partial replacements – does not apply to non-residential lines, because there are no "public side" line attached to non-residential private lines.<sup>246</sup>

In addition to setting forth PWSA's position on the three remaining Lead Remediation litigated issues, PWSA will endeavor to provide for the convenience of the ALJs and the Commission answers to the "Directed Questions" having to do with Lead Remediation in the "Other Issues" section of this portion of the Brief.

1. **Replacement of Private-Side Lead Services Lines Not Scheduled For Replacement Through PWSA's Current Lead Service Line Replacement Programs**

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<sup>245</sup> See OSBA St. 1-SD (Kalcic) at 3; OSBA St. 1-S (Kalcic) at 3; OSBA St. 1 (Kalcic) at 1-6.

<sup>246</sup> PWSA St. C-1RJ (Weimar) at 10-11; PWSA St. C-1R-Supp (Weimar) at 1-7. PWSA's Commission-approved tariff provides that PWSA is not responsible (or liable) for the customer's own service pipe, line, fixtures or other installations. See, e.g., PWSA Water Tariff at Part III, Section A, Paragraph B.12. Under the tariff, all Non-Residential service lines, regardless of diameter, are the responsibility of the property owner, including the section from the Curb Stop, the Curb Box, and that portion of the Water Service Line running from the Curb Stop to the Water Main. PWSA Water Tariff at Part III, Section B, Paragraph 12.a.

*a. Income-Based Reimbursement for Private-Side Service Line Replacements Initiated by Property Owner*

As noted above, in July, 2019 PWSA enacted a Lead Service Line Replacement Plan for residential properties.<sup>247</sup> In that Policy (much of which has been reflected in the Partial Settlement), PWSA voluntarily elected to continue to replace all private-side residential lead service lines whenever it replaces the “public-side.” Currently, PWSA is subject to the 2017 PADEP Lead COA, which requires PWSA to replace at least 7% of its public-side lead line inventory each year if its lead and copper tap water monitoring shows that the sampled drinking water exceeds the “Action Level.”<sup>248</sup> While the Lead COA’s replacement mandate only applies to *public* side lead service lines, PWSA has voluntarily elected to also replace the corresponding private side line at residential properties, in order to avoid partial replacements. A “partial” replacement can exacerbate, for a period of time, the lead levels in the homeowner’s tap water.<sup>249</sup> PWSA is also replacing private lead service lines for low income customers pursuant to its Community Environmental Project also authorized in the Lead COA in which it has agreed to spend up to \$1.8 million to replace without charge private lead service lines for low income customers.<sup>250</sup>

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<sup>247</sup> Exhibit RAW/C-46 (July 2019 Policy). Both the July 2019 Policy and the Settlement define “residential properties” as a residential property with up to four (4) dwelling units or a dual use property (residential and commercial) with service lines 1-inch in diameter or less, for which PWSA has maintained responsibility for the water service line from the water main to and including the curb stop. *See* July 2019 Policy at § 3; Partial Settlement at § III.VV.1.a.

<sup>248</sup> Lead COA at § O.

<sup>249</sup> PWSA St. C-1RJ (Weimar) at 3-4. It should be clarified that partial replacements would not exist for larger residential or non-residential customers — since PWSA does not own any portion of larger residential or non-residential service lines. *See* PWSA St. C-1SR at 2.

<sup>250</sup> *See* footnote 225.



Once PWSA is no longer subject to the 7% requirement, because its tap water testing no longer finds lead or copper that falls above the “Action Level,” and the Community Environmental Project is completed, it will continue to replace public and private-side lead lines. This will happen in one of three ways: (1) as part of PWSA’s SDWMR Program; and (2) whenever PWSA replaces a public-side lead line in an emergency, line breaks or leaks; or (3) as part of the income based, customer initiated replacement program (PWSA will replace the corresponding public side lead line (if there is one) when the customer replaces his/her lead line).<sup>251</sup> The July 2019 Policy will eventually address all known residential lead service lines in PWSA’s system.<sup>252</sup>

This Policy must be viewed in the context of the corrosion control plan that PWSA has implemented, with the direction and approval of PADEP. PWSA started injecting orthophosphate into its system in April, 2019.<sup>253</sup> Even with just two months of treatment, PWSA’s test results reflected a drop in the 90<sup>th</sup> percentile results.<sup>254</sup> Mr. Weimar testified that he expects that “lead levels will be reduced to single digit or non-detectible levels at most homes with lead service lines or plumbing as the effectiveness of orthophosphate continues to increase.”<sup>255</sup> This has been the experience at every other water system that has employed orthophosphate,<sup>256</sup> for example, in the District of Columbia.<sup>257</sup>

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<sup>251</sup> July 2019 Policy § 4.2.c-d; PWSA St. C-1SD (Weimar) at 26.

<sup>252</sup> PWSA St. C-1RJ (Weimar) at 4. PWSA is in the process of attempting to inventory all lead service lines in its system. A process that it has committed to complete by the end of 2020. Partial Settlement at § III.QQ.

<sup>253</sup> See PWSA St. C-1RJ (Weimar) at 3, 17-18.

<sup>254</sup> PWSA St. C-1SD (Weimar) at 22-23.

<sup>255</sup> PWSA St. C-1-SD (Weimar) at 23.

<sup>256</sup> PWSA St. C-1 (Weimar) at 60.

<sup>257</sup> PWSA St. C-1RJ (Weimar) at 18. *See, e.g.*, <https://www.dewater.com/leadcompliance> and *DC Water, 2019 Drinking Water Quality Report*, [dewater.com/waterreport](https://www.dewater.com/waterreport).



Notwithstanding PWSA's Lead Service Line Replacement Program started in 2018 as a result of PWSA's 2018 Lead Remediation Policy, its SDWMR Program starting in 2020 and its Corrosion Control Program mitigating the immediate need for private-side line replacement, PWSA has established a program to assist customers who, nevertheless, wish to replace their private-side lead service line outside of those programs. That Policy provides that if a homeowner elects to replace his or her own lead service line at their own cost after January 1, 2019: (1) PWSA will replace the public portion of the lead service line at no cost to the homeowner, including public sidewalk replacement; (2) PWSA will not charge a tapping fee; and (3) PWSA can agree on a case-by-case basis to allow a customer to tap into a different main for ease of connection and that PWSA will waive any tapping fee for that service.<sup>258</sup> In addition, PWSA's July 2019 Policy establishes an income-based reimbursement structure for when a homeowner elects to replace their private-side lead service line after January 1, 2019.<sup>259</sup> For households with income levels below 300 percent of the federal poverty level, as adjusted annually, PWSA will reimburse the entire cost of the private side lead service line replacement. PWSA will reimburse 75 percent of the cost of the private side lead service line replacement for households with income levels between 301 and 400 percent of the federal poverty level, as adjusted annually. For households with income levels between 401 percent and 500 percent of the federal poverty level, as adjusted annually, PWSA will reimburse 50% of the cost of the private side lead service line replacement. The policy provides that all other households will be

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<sup>258</sup> July 2019 Policy at § 10.

<sup>259</sup> July 2019 Policy § 10.d.

offered \$1,000 stipend towards the replacement cost of a private side lead service line replacement.<sup>260</sup>

Based on an analysis of demographics in its service territory, PWSA believes that over 50% (53%) of households in its service territory would be fully reimbursed for a private-side lead line replacement, and 75% would qualify to receive a reimbursement of 50% or greater.<sup>261</sup> The remaining customers would still receive a \$1,000 stipend to help defray the costs of a customer requested private-side lead line replacement. While PWSA's Policy refers to the plan as a "reimbursement" the Authority made clear during the hearing that it was willing to work with third parties so that PWSA would pay the customer's contractor (usually a plumber) directly,<sup>262</sup> thereby obviating the need for the customer to initially "front" the entire cost. Moreover, PWSA's efforts to make the private contractor replacement as efficient as possible has met with some success. Although based on a smallish sample, private lead service line replacements for which it has reimbursed the customer to date have run at about 75% of the \$5,500 PWSA direct cost of private line replacement.<sup>263</sup> This means that having the customer's private contractor undertake the replacement will actually reduce the relative cost of line replacement compared to PWSA being entirely responsible for the replacements. Based on PWSA's analysis, it expects that PWSA ratepayers will save \$8 - \$18 million if its Income Based Private Service Line Replacement Plan goes forward.<sup>264</sup> It should be noted that this is an

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<sup>260</sup> July 2019 Policy § 10.d.

<sup>261</sup> PWSA St. C-1SD (Weimar) at 31.

<sup>262</sup> PWSA St. C-1RJ (Weimar) at 11.

<sup>263</sup> PWSA St. C-1RJ (Weimar) at 9-10.

<sup>264</sup> Exhibit RAW-C-46 (July 2019 Policy) at § 3.2; PWSA St. C-1SD (Weimar) at 32; UNITED St. C-1 Supp-R (Miller).

extremely conservative calculation which does not reflect the lower actual per-line costs seen in the recent reimbursement program and includes an assumption that PWSA would expend \$1,000 for administrative costs to enroll each low and moderate income (up to 300% of the Federal Poverty Level (“FPL”)) customers in the program to qualify them to be exempt from cost contribution.<sup>265</sup> It is unlikely that the actual cost will reach that level;<sup>266</sup> to the extent those administrative costs are reduced, the cost saving to PWSA ratepayers relative to the 100% PWSA funded approach advocated by the Opposing Parties would increase. Overall, PWSA submits that its tier-based private contractor, reimbursement approach, in the context of its overall lead remediation strategy, fairly balances the goals of eliminating lead in the PWSA system while controlling costs. It also apportions some cost responsibility to the customer, recognizing that the Plan covers a customer’s private service line which ordinarily is entirely the responsibility of the property owner and not the utility.

The Commission Should Reject the Opposing Parties’ Demand that PWSA Be Ordered to Replace Customer-Initiated Private-Side Lead Line Replacements at No Direct Cost to the Customer.

Witnesses for UNITED,<sup>267</sup> OCA<sup>268</sup> and I&E<sup>269</sup> all have called on the Commission to reject PWSA’s income-based reimbursement/replacement plan and instead require PWSA – that is, PWSA’s ratepayers – to cover the entire cost of replacing a customer’s private service line. The claimed reason for their position is that a “reimbursement plan” however structured will,

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<sup>265</sup> UNITED St. C-1SUPP-R (Miller) at Appendix A.2.

<sup>266</sup> PWSA St. C-1RJ (Weimar) at 13.

<sup>267</sup> UNITED St. C-1-Supp-R (Miller) at 4-14; UNITED St. C-2-Supp-R (Welter) at 2-8; UNITED St. C-1-Supp-R (Lanphear) at 2-6.

<sup>268</sup> OCA St. 2R-Supp (Rubin) at 3-7.

<sup>269</sup> I&E St. 4-RS (Gray) at 3-8.

allegedly, deter some customers from actually having their private service line replaced.<sup>270</sup> But, in PWSA's view, the Parties advocating this 100% "PWSA Ratepayers Pay" position have overlooked or misunderstood several crucial points that makes interfering with PWSA's elective policy not only inadvisable but contrary to Commission precedent and beyond the Commission's legal authority to mandate.

First, the witnesses for each of the parties advocating for a "PWSA Ratepayers Pay" policy have made clear that their opposition is grounded on the fear that a reimbursement approach for private-side lead lines will mean that all private-side lead service lines will not be removed.<sup>271</sup> It is also clear that the only reason for removing private-side lead service is to address the public health issue of making the customer's water's quality acceptable, i.e., to eliminate the actual and/or real potential that a customer's tap water will have unacceptable levels of lead in it.<sup>272</sup> Therefore, the level of lead in tap water is a plainly a "water quality" issue, and courts and the Commission have made clear over the years that water quality issues are the province of the PADEP to regulate – not the Commission.

Accordingly, the Commission lacks the jurisdiction to decide issues pertaining to lead in PWSA's water supply and to order PWSA to replace lead service lines. Even if the Commission has jurisdiction to order PWSA to replace its lead service line, the Commission lacks jurisdiction to order PWSA to replace customer-owned lead lines.

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<sup>270</sup> See footnotes 267 to 269.

<sup>271</sup> See, e.g., UNITED St. C-2 Supp-R (Welter) at 6.

<sup>272</sup> See, e.g., UNITED St. C-2 (Welter) at 3-7, 15-18, 20, 22, 35, 37; UNITED St. C-3 (Lanphear) at 2-43; UNITED C-2-SR (Welter) at 2-5, 9; UNITED C-3-SR (Lanphear) at 3, 5-13.

It is well-settled that the Commission may not exceed its jurisdiction and must act within it. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy,<sup>273</sup> and jurisdiction may not be conferred where none exists.<sup>274</sup> The Commission holds only the statutory authority the Legislature has specifically granted to it in the Public Utility Code.<sup>275</sup>

Section 1501 of the Public Utility Code requires that “[e]very public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.”<sup>276</sup>

Additionally, Section 1505(a) of the Code provides that if the Commission finds that a utility’s “service or facilities” are “unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory . . . ,” the Commission has the authority to mandate actions to make them reasonable, safe and adequate (etc.).<sup>277</sup>

Thus, the Commission has jurisdiction to decide matters relating to a utility’s facilities and service. However, the Commonwealth Court has made clear that there is a distinction between water service, which the Commission may regulate pursuant to Sections 1501 and 1505, and water quality, which is outside of the Commission’s jurisdiction.<sup>278</sup>

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<sup>273</sup> *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992), *appeal denied*, 637 A.2d 293 (Pa. 1993).

<sup>274</sup> *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>275</sup> *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>276</sup> 66 Pa.C.S. § 1501.

<sup>277</sup> 66 Pa.C.S. § 1505(a).

<sup>278</sup> *Rovin, D.D.S. v. PUC*, 502 A. 2d 785 (Pa.Cmwlth 1986) (“Rovin”); *Pickford v. PUC*, 4 A.3d 707 (Pa.Cmwlth. Ct. 2010) (“Pickford”); *see also Country Place Waste Treatment Company, Inc. v. PUC*, 654 A.2d 72 (Pa.Cmwlth 1995) (Commission lacks authority to regulate air quality where sewage treatment plant caused odor).

In one of the seminal cases, *Rovin*, the Petitioner sought review of a Commission decision to dismiss his complaint which alleged that his water utility failed to provide him with adequate, safe and reasonable water service in violation of Section 1501 of the Public Utility Code when the utility provided only some of its customers with fluoridated water. The Commonwealth Court held, “It is apparent that Petitioner herein is not complaining about the quality of service but rather the quality of water.”<sup>279</sup> The Court went on to explain that water quality is statutorily regulated by the provisions of the Pennsylvania Safe Drinking Water Act and the Federal Safe Drinking Water Act. Enforcement of these statutes is specifically vested in the PADEP and the Federal Environmental Protection Agency (“EPA”).<sup>280</sup>

In the *Pickford* case, the Commonwealth Court, again, emphasized the difference between water service and water quality when determining Commission jurisdiction. In this case, the Court found that customer complaints related to the conversion of water treatment plants from chlorinated water to chloraminated water were obvious challenges to the health effects of chloramines under permits issued by PADEP and, thus, outside the Commission’s jurisdiction.<sup>281</sup> The Court held, “Precedent makes clear the distinction between water service, which the Commission may regulate, and water quality, which may only be regulated by the PADEP.”<sup>282</sup> Importantly, in making its determination, the Court found that it was beyond the Commission’s jurisdiction to conduct its own evaluation of PADEP-approved water treatment chemicals.<sup>283</sup>

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<sup>279</sup> *Rovin*, 502 A.2d at 787.

<sup>280</sup> *Rovin*, 502 A.2d at 787.

<sup>281</sup> *Pickford*, 4 A.3d at 713.

<sup>282</sup> *Pickford*, 4 A.3d at 713

<sup>283</sup> *Pickford*, 4 A.3d at 714.

Similar to the *Rovin* and *Pickford* cases, the issue of lead in PWSA's water supply and the appropriate measures to take to remedy the situation are water quality issues that are within the jurisdiction of the PADEP.<sup>284</sup> Under PADEP's regulations (and EPA's Control of Lead and Copper Rules — which are also enforced by PADEP), if a water utility's lead test results fall below the "Action Level," it has no obligation to replace any lead lines — public or private.<sup>285</sup> As explained above, PADEP and PWSA have entered into the Lead COA codifying PWSA's compliance requirements under PADEP's regulations. In it, PWSA agreed to replace at least 7% of its existing public lead service lines each year when its lead levels in the prior six months fall above the "Action Level," (which is presently the case) as well as to provide customer notice, follow-up testing and public education whenever it exceeds the Action Level.<sup>286</sup> The Lead COA not only directs the number of PWSA-owned lead service lines that the Authority is obligated to replace, it also directs specific reporting and customer notice for any "partial" replacements. Note, however, that PWSA voluntarily decided to replace private-side lead service lines when it replaces public side lines in response to the Lead COA requirements to avoid "partial" replacements as much as possible.<sup>287</sup> The Lead COA also requires that PWSA study and then implement (after obtaining PADEP approval) a corrosion control treatment plan,<sup>288</sup> to conduct a "materials evaluation" showing all known lead service line information,<sup>289</sup> to submit a "lead service line replacement schedule" in conformance with the requirements of the Lead COA,<sup>290</sup>

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<sup>284</sup> See 25 Pa. Code § 109.1101 to 109.1108.

<sup>285</sup> *Id.* See also 40 CFR Part 141 Subpart I.

<sup>286</sup> See PWSA St. C-1RJ (Weimar) at 2; Lead COA at § 3.e, 3.g.

<sup>287</sup> PWSA Hearing Exh. 3 (LTIP) at § 2.2.1, 8.2.

<sup>288</sup> Lead COA at § 3.b.

<sup>289</sup> Lead COA at § 3.c.

<sup>290</sup> Lead COA at § 3.d, 3.e.

and quarterly progress reports to PADEP.<sup>291</sup> Given PADEP's comprehensive and active regulation of PWSA's water quality issues associated with lead, it is unnecessary and beyond the Commission's jurisdiction to conduct its own evaluation of these water quality issues and to direct additional (and potentially conflicting) lead remediation actions or programs.

The Commission has stated that "the Commission and PADEP are State agencies jointly charged with protection of fundamental aspects of public health and safety."<sup>292</sup> This is undoubtedly true. PWSA respects and appreciates the Commission's role in assisting PWSA in providing "safe and adequate service." But the court cases make clear that the Commission's role does not extend to directing a public utility to take steps the purpose of which is to improve a Commission-determined standard of water quality safety. According to the available case law, it appears fairly clear that the Commission must defer to PADEP on these issues. Certainly, while PWSA continues to be subject to the Lead COA, imposing additional requirements would potentially subject PWSA to inconsistent directives and obligations.

Moreover, even if the Commission were to conclude that it had jurisdiction over some aspect of PWSA's lead remediation efforts, the Commission clearly lacks jurisdiction to order PWSA to replace *customer-owned* lead lines.<sup>293</sup> Sections 1501 and 1505 of the Public Utility Code pertain specifically to the service and facilities of *public utilities* and do not give the Commission jurisdiction to regulate privately-owned service lines. This lack of jurisdiction is reflected in PWSA's Tariff which establishes unequivocally that the customer service line is the responsibility of the customer:

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<sup>291</sup> Lead COA at § 3.f.

<sup>292</sup> Docket No. M-2018-2640803, November Secretarial Letter at 3.

<sup>293</sup> See, *Pickford v. PUC*, 4 A.3d 707 (Pa.Cmwlth. 2010).



Definitions:

4. Authority Service Line: The water line from the distribution facilities of the Authority which connects to the customer service line at the hypothetical or actual line or the actual property line, including the control valve and valve box. The control valve and valve box determine the terminal point for the Authority's responsibility for the street service connection (pg. 20). \* \* \*

Moreover,

16. Customer Service Line [Definition]:

The water line extending from the Curb Stop to a point of consumption. If there is no actual Curb Stop, the term "Curb Stop" shall be deemed to be a point on the property line or at the connection to the Authority's Water Main, whichever is closer to the Premises (pg. 22). \* \* \*

Construction and Maintenance of Facilities

1. Customer Service Line:

The customer service line shall be furnished, installed, maintained and/or replaced, when necessary, by and at the sole expense of the customer. The Authority reserves the right to determine the size, location, type, material, and depth of customer service lines (pg. 31).

\* \* \*

3. Customer's Responsibilities: All service lines, connections and fixtures furnished by the customer shall be maintained by the customer in good working order. All valves, meters and appliances furnished by the Authority and on property owned or leased by the customer shall be protected properly by the customer. All leaks on the customer service line or any pipe or fixtures in or upon the customer's premises must be repaired immediately by the customer (pg. 31).

The Commission has consistently held that utility private service lines are NOT the responsibility of the utility (with the resulting cost of repair or replacement having to be absorbed by utility's ratepayers.)<sup>294</sup> PWSA has been unable to find a single case in

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<sup>294</sup> See, *PUC v. Mercer Gas*, Docket No. R-80091297, Opinion and Order entered August 21, 1981; 1981 Pa. PUC LEXIS 40.

which the Commission has imposed the cost of repairing or maintaining private service lines on a utility (and, thus, on a utility's other ratepayers).

Moreover, while recent legislation has established that if a public utility replaces a customer-owned lead service line it may recover the cost of such a replacement in its rates,<sup>295</sup> the legislation would appear to support the conclusion that the Commission did not have jurisdiction to order such private facility replacement or to permit recovery in a utility's rates, prior to this new legislative authority.<sup>296</sup> This provision does require that, before a public utility may obtain rate recovery for the replacement of a customer-owned lead service line it must file and obtain approval of a tariff provision with the Commission, which PWSA will do as part of this proceeding.<sup>297</sup> Most relevant for these purposes, however, the legislation plainly makes a utility's replacement of private lead service lines (as well as defective private sewer lines) discretionary on the part of the

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<sup>295</sup> 66 Pa.C.S. 1311(b).

<sup>296</sup> A similar newly enacted provision is applicable to municipal authorities states: "Notwithstanding any other provision of law to the contrary, in addition to the powers granted to an authority under 53 Pa.C.S. § 5607 (relating to purposes and powers), an authority may: (1) Perform the replacement or remediation of private water laterals and private sewer laterals for customers of the authority if the authority determines that the replacement or remediation will benefit the public health, public water supply system or public sewer system. No authority that has performed a replacement or remediation shall be deemed to be the owner of a private water lateral or private sewer lateral or be obligated to perform any other duties unless determined necessary by the authority." 72 P.S. § 1719-E(c).

<sup>297</sup> Accordingly, PWSA proposes that PWSA be permitted to file a tariff revision setting forth its Policy on replacing lead and galvanized iron private service lines for residential customers. PWSA proposes that the tariff revision be filed as part of its "compliance tariff" reflecting other tariff revisions that will be necessary as a result of the PUC's Order here. All parties will have an opportunity to review and comment upon the tariff revision as part of the compliance filing procedures set forth in 52 Pa. Code § 5.592. In its next rate case, PWSA will ask for a waiver of the provision of § 1311 that states that a utility may recover the cost of replacing a private lead service line by including it in its rate base, since PWSA is a cash flow regulated company and does not have a rate base.

utility,<sup>298</sup> and also recognizes PADEP's authority in this area.<sup>299</sup> It is also consistent with the authority granted to municipal authorities to replace private lines:

if the authority determines that the replacement or remediation will benefit the public health, public water supply system or public sewer system. Before using public funds the authority shall consider the availability of public funds, equipment, personnel and facilities and the competing demands of the authority for public funds, equipment, personnel and facilities.<sup>300</sup>

Third, PWSA's income-based reimbursement plan is reasonably similar to the private service replacement programs implemented by other utilities. For example,

- The Philadelphia Water Department ("PWD" is not regulated by the Commission) will provide the customer with a 60-month, zero-interest loan. PWD does not assume responsibility for the work.<sup>301</sup>
- York Water will replace the line and will pay an amount not to exceed the Company's average contracted cost for replacing customer-owned lead serve lines in the year the replacement is made. Customers are required to pay the difference.<sup>302</sup>
- PAWC will group customer requests by geographic location and it will undertake replacements when the number of customer requests in a given location allows the Company to realize reasonable economies of scale by doing those replacements as a single project. The Company will proceed with replacements at the actual costs of such replacements up to the budget amount of \$6 million per year.<sup>303</sup>

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<sup>298</sup> 66 Pa.C.S. § 1311(2)(v), (vi).

<sup>299</sup> *Id.*, § (4).

<sup>300</sup> 72 P.S. § 1719-E (emphasis added).

<sup>301</sup> City of Philadelphia Water Department website, *available at* <https://www.phila.gov/water/wu/drinkingwater/lead/Pages/programs.aspx>; <https://www.phila.gov/water/educationoutreach/customerassistance/Pages/HelpLoan.aspx> (Accessed: 16 August 2019).

<sup>302</sup> *Petition of the York Water Company*, Docket No. P-2016-2577404, Joint Petition for Settlement (Jan. 23, 2017).

<sup>303</sup> *Petition of Pennsylvania-American Water Company*, Docket No. P-2017-2606100, Joint Petition for Settlement on Remand (July 17, 2019).

In contrast to these other utilities, PWSA has voluntarily agreed to eventually replace residential private lead service lines at no direct cost to the customers when it replaces public-side lead service lines (costs which will be reflected in higher rates). If, however, a customer wishes to have his or her line replaced immediately, rather than waiting for his/her line to be replaced as part of Lead COA compliance or as part of the SDWMR Program, then PWSA's policy is to require a contribution based on income. PWSA believes that, in fairness, customers who have the wherewithal to make a contribution to the cost of such a replacement should do so. Importantly, PWSA's plan would exempt from payment those customers whose income is below 300% of the FPL – for a family of four that level is \$77,250<sup>304</sup>. As Mr. Weimar noted, that level is well above the median household income for Pittsburgh (\$58,521 – for 2017) and almost the same as the median family income (\$77,460). And PWSA's plan would have the customer pay only twenty-five percent of the cost of the replacement if their income does not exceed \$103,000 and fifty percent if one's income does not exceed \$128,750, for a family of four.<sup>305</sup> This means that some 75% of Pittsburgh households would be eligible to receive reimbursement of at least 50% of the cost of replacing a private lead service line pursuant to a customer-initiated replacement, and the average family, based on income, would receive a 100% reimbursement.

Fourth, PWSA is willing to structure its income-based reimbursement plan to address at least some of the concerns raised by the parties. PWSA is willing to modify the program so that customers need not come up with the full cost of the replacement and

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<sup>304</sup> PWSA St. C-1RJ (Weimar) at 14.

<sup>305</sup> PWSA St. C-1RJ (Weimar) at 14.

then be reimbursed. Mr. Weimar testified that PWSA intended to structure the “reimbursement” so that PWSA would pay the contractor, eliminating the need for the customer to “front” the payment and have to await reimbursement,<sup>306</sup> thus eliminating one of the chief concerns raised by the Opposing Parties.<sup>307</sup> PWSA is also willing to work with the CLRAC to enable tenants of multi-family dwellings (that have a private service line of one inch or smaller connected to a public-side service line), to qualify for the income-based reimbursement based upon the income of the tenants rather than the landlord, and to commit to consulting with CLRAC regarding development of its outreach program.<sup>308</sup>

Finally, PWSA submits that its income-based, customer initiated replacement program reasonably balances the somewhat conflicting policy goals of effectuating the full replacement of lead service lines throughout its system as soon as reasonably possible while controlling ratepayer costs and being fair to ratepayers generally.<sup>309</sup> As discussed above, PWSA has voluntarily agreed to replace residential private lead service lines whenever it replaces the public side, and to create a plan for the eventual replacement of all residential lead service lines – public AND private.<sup>310</sup> Those

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<sup>306</sup> See, PWSA St. C-1RJ (Weimar) at 11.

<sup>307</sup> See, UNITED St. C-1SUPP-R (Miller) at 5-6; UNITED St. C-2SUPP-R (Welter) at 6.

<sup>308</sup> PWSA St. C-1RJ (Weimar) at 11-12. Mr. Weimar explained that one of the other suggestions to increase the cost efficiency of the program – that PWSA should group ad hoc replacements requests geographically to enhance the efficiency of performing the work – was unnecessary and would not produce the desired cost reductions. PWSA’s plan would have customer hire contractors (potentially from a pre-approved list to make it easier to find a qualified plumber) to conduct the customer-side work. Mr. Weimar testified that customer-side replacements are typically performed by smaller plumbing firms that utilize trenchless technology thereby eliminating the need to open streets or use heavy equipment. *Id.* At 9.

<sup>309</sup> PWSA St. C-1RJ (Weimar) at 3-4, 15.

<sup>310</sup> Settlement, Lead Remediation, § III.OO to III.YY.

remediation efforts will cost hundreds of millions of dollars, and while PWSA is committed to finding any and all public financing or low interest loans it can secure to offset this cost, the great bulk of the burden will have to be recovered from PWSA ratepayers.<sup>311</sup> Both PWSA and several of the parties to this proceeding have expressed concern about the level of rate burden that PWSA ratepayers will have to bear in the coming years, to permit PWSA to go forward with a host of infrastructure improvements, such as replacing the Clearwell, reinforcing water delivery and upgrading treatment systems.<sup>312</sup> Considering the enormity and cost of these tasks, it would seem reasonable on its face to ask ratepayers who are able to do so to make a contribution to replacing their own water line.

The bottom line is that PWSA's Board-approved plan for customer-owned lead service line replacements that are not prompted by PWSA removal of a corresponding public side lead line is reasonable and appropriate; moreover, since this is clearly a water quality issue, PWSA respectfully suggests that the Commission does not have the legal authority to direct it to do anything different.

***b. Continuation of Neighborhood-Based Replacement Program***

While several parties took issue with PWSA's income-based reimbursement approach for customer initiated lead service line replacement, only UNITED contended that, in addition to the SDWMR Program and the Customer Initiated Reimbursement Program, PWSA should also be

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<sup>311</sup> PWSA S. C-1RJ (Weimar) at 3. Under a loan and a grant from PENNVEST (registered at PUC Docket No. S-2019-3007162), PWSA will replace 4,400 public lead service line connections and 3,400 private side service line replacements at a cost of \$49,128,404 in 2019 and 2020. PWSA St. C-1 (Weimar) at 51, 54; PWSA Exh. RAW/C-23.

<sup>312</sup> PWSA St. C-1RJ (Weimar) at 5; PWSA St. C-1R (Weimar) at 5, 21, 51. *See also* UNITED St. C-1SUPP-R (Miller) at 6. ("... PWSA's low income customers ... already cannot afford their current bills.").

directed to replace additional public and private lead service lines through an additional “neighborhood-based” program.

I recommend that PWSA eliminate the income-based reimbursement program and instead offer to replace all private-side lead service lines in its system at no direct cost to customers. The most efficient way to replace all public- and private-side lead service lines would be to continue the neighborhood-based program beyond 2020 and operate it in tandem with the small-diameter water main replacement program. The neighborhood-based program should also be expanded to provide free replacements of private-side-only lead service lines, including in previous work order areas of the neighborhood-based program where PWSA skipped over those lines. In most cases, a private-side-only lead service line is the product of a partial replacement by the utility at some point in the past.<sup>313</sup>

Mr. Welter’s recommendation is another way of saying that he is not satisfied with the pace of replacement of all lead service lines that will result from the Lead COA, the SDWMR Program and the Customer Initiated Reimbursement Program and wants PWSA to pick up the pace by engaging in *another* program that would replace even more lines per year, at a pace that presumably is more acceptable to him (and United). But, Mr. Welter’s demands appear to misunderstand PWSA’s other lead commitments and is, in any event, premature.

As noted above, PWSA is currently offering a Community Environmental Project as part of the 2017 Lead COA with PADEP. On a going forward basis, it has also committed to replacing all known residential private lead service lines in its service territory where the property owner consents to the replacement and PWSA does not encounter technological impediments in replacing the line.<sup>314</sup> It has also committed to establishing an estimate of all lead service lines in its service territory (connected to a residential structure) by the end of 2020, and by March 31, 2021, to formulating a plan and timeline for removing the known public and

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<sup>313</sup> UNITED St. C-2 Supp-R (Welter) at 8 (emphasis added).

<sup>314</sup> PWSA St. C-1RJ (Weimar) at 9-10; Partial Settlement at § III.VV.



private-side lines connected to a residential structure.<sup>315</sup> It also committed to reporting on whether it successfully replaced (at least) 10 miles of Small Diameter Water Main in “Priority Lead Neighborhoods,” and, if not, explaining how PWSA plans to address those factors and endeavor to the maximum extent possible to reach the 10 mile target moving forward.<sup>316</sup> Finally, Mr. Weimar explained that its future plan to remove all known residential public and private-side lead service liens “may include” a neighborhood Lead Service Line Replacement (“LSLR”) program, and that the “planning will be based on an evaluation of the results of the lead line inventory [agreed to in the Partial Settlement], available resources, and the location of SDWMR replacements.”<sup>317</sup> Mr. Weimar went on to testify that “PWSA cannot adequately plan for a neighborhood LSLR until probably 2024 when it knows where all the 2020-2026 SDWMR areas will be.”<sup>318</sup> PWSA, therefore, not only committed to all of these steps but agreed with UNITED and the other Parties in the Joint Petition that these efforts are “in the public interest.”<sup>319</sup> Accordingly, this recommendation is already covered by the Partial Settlement and need not and should not be addressed separately by the Commission.

## **2. Replacement of Non-Residential Lead Service Lines**

In addition to the approximately 8-20 thousand private side residential lead service lines,<sup>320</sup> PWSA estimates that there are a small number of private side galvanized iron lines connected to non-residential locations.<sup>321</sup> While acknowledging that virtually no lead service

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<sup>315</sup> Partial Settlement at § III.QQ.2.a.

<sup>316</sup> Partial Settlement at § III.QQ.3; Partial Settlement at § III.VV.2.a

<sup>317</sup> PWSA St. C-1RJ (Weimar) at 16-17.

<sup>318</sup> PWSA St. C-1RJ (Weimar) at 17.

<sup>319</sup> Settlement at ¶ 54.

<sup>320</sup> See footnote 212.

<sup>321</sup> PWSA St. C-1R-Supp (Weimar) at 3-5; PWSA St. C-1RJ (Weimar) at 10-11.



lines were used for non-residential customers, Mr. Kalcic claimed that PWSA's recent Lead Service Line Replacement Program Policy newly covers galvanized iron, which are in place for a small number of non-residential customers (562 private side lines out of a total of almost 10,000 commercial, industrial and Health and Education customers).<sup>322</sup> Mr. Kalcic advocates that those non-residential property owners with galvanized steel lines should also receive a stipend to subsidize the replacement of their private-side service line since, he claims, PWSA has elected to replace residential customer private-side lines free of charge "under most circumstances."<sup>323</sup>

Mr. Kalcic's basic premise is wrong for several reasons. First, and as explained above, whether PWSA should or shouldn't replace a lead or galvanized iron service line (PWSA has treated galvanized iron lines the same as lead lines since at least the implementation of its 2018 Lead Remediation Policy)<sup>324</sup> is a water quality issue, regulated by PADEP – not the Commission. Also as noted, PADEP regulations impose no requirement for PWSA to replace private lead service lines – for either residential or non-residential customers. Accordingly, PWSA's voluntary decision to replace some private residential lead service lines (when it replaces a public-side line) is a water quality issue not covered by the Commission's regulatory authority and, in any event, committed to the Authority's discretion.

Second, under PWSA's established policy all residential customers are not going to have their lead service lines replaced without cost "in most circumstances." PWSA's policy, as

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<sup>322</sup> OSBA St. 1-SD (Kalcic) at 3. OSBA Exh. I-5. The interrogatory response lists 4 "Public Side" Non-Residential galvanized iron lines, but those are actually private lines in the public right-of-way.

<sup>323</sup> OSBA St. 1-SD (Kalcic) at 1-2.

<sup>324</sup> PWSA St. C-1R-Supp. (Weimar) at 3-4. Galvanized iron service lines (serving certain residential properties and dual use properties) are included in PWSA's Lead Service Line Replacement Policy due to concerns that galvanized iron service lines were typically joined to a lead public service line and lead leaching from the public lead segment can be deposited on the inside of galvanized iron piles, leading to lead leaching if only the public side is replaced in these instances. *Id.*

described in detail above, is to replace a private side line with no direct cost to the residential property owner only when PWSA replaces the public side lead line either: 1) as part of the lead line replacement program mandated by PADEP under the Lead COA; or 2) after PWSA is no longer subject to a public lead line replacement requirement under the Lead COA (i.e., when the PADEP-mandated every six month water testing does not exceed the Lead Action Level, which PWSA expects to occur shortly), pursuant to the Authority's SDWMR Program; or 3) when a public side line is replaced because of a leak or other emergency. In any other circumstance, PWSA will require the property owner to replace his or her private service line and then be reimbursed using a sliding scale based on income.

Third, Mr. Kalcic apparently does not recognize that the reason that PWSA is treating residential and non-residential private lines differently – is because they are different. As Mr. Weimar explained, PWSA has committed to replace the private side of a residential lead service line when the public side is being replaced principally to avoid “partial” replacements (i.e., replacing one part of the lead service line and not the other). It is avoidance of “partial” replacements that is the “public health”<sup>325</sup> issue being addressed by the PWSA in its decision to cover private line replacement. But none of the non-residential customers that have a private lead or galvanized iron service line also have a lead or galvanized iron public side line.<sup>326</sup> Since there is no concern about increasing water lead levels by creating “partials” for non-residential customers, there is no similar public health policy reason to have PWSA ratepayers pay the cost

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<sup>325</sup> Mr. Kalcic suggested that if it was a public health requirement to replace residential private-side lead lines then it should be a public health issue to replace, nonresidential customer private lines. *See* OSBA St. 1 (Kalcic) at 5; OSBA St. 1-S (Kalcic) at 2; OSBA St. 1-SD (Kalcic) at 2; OSBA St. 1-SR (Kalcic) at 2-3. Mr. Kalcic has misunderstood the “public health” issue.

<sup>326</sup> PWSA St. C-1R-Supp (Weimar) at 4. As explained in footnote 322, there are 4 private non-residential galvanized iron lines that are in the public right-of-way; but they are nonetheless fully private lines.

of such replacements. Importantly, PWSA's corrosion control program and the use of Orthophosphate will reduce lead levels in both residential and non-residential tap water to well below the action levels. So, without the concern about a "partial" replacement unreasonably increasing lead levels there is no water quality reason for an Authority-initiated non-residential private line replacement program.

Finally, as Mr. Weimar explained, PWSA's voluntary decision to replace residential private lead and galvanized iron service lines is due, in part, to PWSA's concern that without such support from PWSA, an unacceptable percentage of private-side lead service lines would not be replaced due to customer inability to fund such investment. This will, in turn, create an unacceptably high level of "partial" replacements or cause PWSA to skip over the public side replacements (to avoid partials) thereby driving up the cost and increasing street dislocations and inconvenience.<sup>327</sup> For non-residential customers, however, replacing a private lead service line can reasonably be viewed as a "cost of doing business," in the same manner as utility service itself.<sup>328</sup> A commercial or industrial customer should be able to pass on the cost of the lead service line replacement as a nominal overhead expense in its prices. Mr. Kalcic certainly has not produced any information that would indicate that nonresidential customers are incapable of funding these replacements or that the additional cost that would be imposed on remaining ratepayers would be reasonable.

The Commission has frequently recognized reasonable differences in policy and rate treatment between residential and nonresidential customers.<sup>329</sup> PWSA's decision not to include

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<sup>327</sup> PWSA St. C-1R-Supp (Weimar) at 3-5.

<sup>328</sup> PWSA St. C-1RJ (Weimar) at 9-10.

<sup>329</sup> See e.g. *Jeffrey Weiser v. Pennsylvania Electric Company*, Docket No. C-2012-2288375, Initial Decision (Dec. 19, 2012), *aff'd*, Final Order (Feb. 12, 2013) (finding that Pennsylvania Electric Company's

nonresidential customers in any reimbursement program – that would result in remaining residential and (unaffected) nonresidential customers paying all or a portion of the cost of a business owner’s lead or galvanized steel private service line – is reasonable and certainly does not constitute unreasonable discrimination. And, as a water quality issue, PWSA’s determination is outside the preview of the Commission.

### **Response to PUC Directed Questions on Lead Remediation**

Several of the Directed Questions had to do with lead remediation; from PWSA’s perspective, all of them have been answered in the record or in the Partial Settlement. For the benefit of the Commission and the ALJs, answers to those questions are set out below.

**7. How PWSA will address the following projects specific to issues identified in the November 17, 2017 PWSA-PA DEP Consent Order and Agreement including the identity of the individual design engineer and the estimated cost, funding source, timeline, and milestone dates for each of the following projects:**

**7.1 Addition of Several Orthophosphate Injection Points and Equipment for Corrosion Control Project;**

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Commission-approved tariff authorizes the Company to incur line extension costs for the installation of residential line extensions, while the costs of a new service line extension to non-residential facilities must be paid for by the applicant/customer, and that the Complainant failed to prove that these tariff provisions had become unreasonable); *see also* Pennsylvania Electric Company (“PENELEC”) Tariff at 23, 26, and 35 (demonstrating that PENELEC’s current tariff authorizes PENELEC to allocate line extension costs differently for residential and non-residential customers); *see also Pennsylvania Public Utility Commission, et. al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2014-2407345, *et al.*, Initial Decision (Aug. 22, 2014), *aff’d as modified*, Opinion and Order (Oct. 23, 2014) (“*Columbia*”). In *Columbia*, the Commission approved a Pilot Rider NAS program that would be available only to residential customers and *bona fide* developers of residential properties that seek natural gas service. Under the Pilot Rider NAS program, residential customers were provided with an alternative to paying a large up-front deposit in order for Columbia to extend its natural gas facilities, but this option was not made available to non-residential customers. Notably, acknowledging the Company’s constraints on the overall size of the program, the economics of the program, and the complexities involved in offering this option to non-residential customers, the OSBA did not contest the Company’s decision to exclude small business customers from eligibility in this program. *See Columbia* Initial Decision at 15.

PWSA's construction plans regarding Orthophosphate Injection Points is discussed in PWSA's LTIP at Section 2.2.3. Information about design engineer, estimated cost, funding source and timeline and milestone dates are set out in PWSA St. C-1 at 48-50.

**7.2 Lead Service Line Replacement Project, including how PWSA determined to limit its lead line replacement policy to single-family residential properties with services lines of 1-inch or less.**

Lead Service Line Replacement ("LSLR"). Information regarding estimated cost funding source timeline and milestone dates for the LSLR are provided in the LTIP Section 2.2, PWSA St. C-1 at 51-57 (including references to PWSA's Compliance Plan and Compliance Plan Supplement). PWSA financed private lead line replacement is limited to residential private-side lines because PWSA's rationale for financing the cost of replacing residential private service lines is to avoid "partial" replacements – replacing the "public-side" of the service line but not the private-side. Increased lead levels are frequently experienced when "partial" replacements occur. However, there are no non-residential "public-side" lead or galvanized iron service lines in PWSA's system. Therefore, there is no public health need to finance the replacement of non-residential lead or galvanized iron lines. *See*, PWSA Main Brief *supra*, § V.E.2. With the exception of OSBA, the Parties agreed that PWSA's private-side lead line replacement should apply only to residential customers (defined as "residential property with no more than four (4) dwelling units or a dual use property (commercial and residential) with service lines of 1-inch in diameter or less, for which the PWSA has maintenance responsibility for the water service line from the water main to and including the curb stop . . . ." Partial Settlement § W, n. 36.

**54. Application of the tariff to matters involving the replacement of PWSA and customer-owned lead water service lines.**

PWSA intends to submit a revision to its Tariff to create an exception to the general rule that makes private water lines the sole responsibility of the customer. That tariff provision is set out in PWSA's Main Brief above (Section E.1, fn. 297).

**60. The reasonableness of PWSA's private lead line replacement project for CAP customers considering the recent October 17, 2018 PENNVEST loan and grant awarded to PWSA.**

PWSA does not have a "private lead line replacement project for CAP customers."

Pursuant to the requirements of the Lead COA with PADEP, PWSA has a Community Environmental Project pursuant to which it will expend up to \$1.8 million to replace private lead lines for low-income customers. *See*, Lead COA at § 4.c; PWSA St. C-1 at 55-56; PWSA St. C-1R at 43-45; PWSA St. C-1SD at 32-33.

**97. CP at pages 119-120 reiterates that the Commission directed the CP to address *inter alia* lead levels in the water supply and replacement of lead service lines. Regarding PWSA's outline plan to continue lead service line replacements, parties should discuss:**

**PWSA's continued funding of the replacement program beyond 2019.**

**98. The reasonableness of PWSA's lead line replacement plan considering the recent October 17, 2018 PENNVEST loan and grant award to PWSA.**

PWSA's lead remediation program and its plan for continuing to fund these activities are described in greater detail in PWSA's Compliance Plan,<sup>330</sup> its LTIIP,<sup>331</sup> and in PWSA's Direct, Rebuttal and Supplemental Testimony.<sup>332</sup> In addition, PWSA has agreed with the Parties that the lead remediation commitments and policies set forth in the Partial Settlement are in the public

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<sup>330</sup> PWSA Hearing Exh. 1 (Compliance Plan); PWSA Hearing Exh. 2 (Compliance Plan Supplement).

<sup>331</sup> PWSA Hearing Exh. 3 (LTIIP).

<sup>332</sup> *See* PWSA Hearing Exh. 4 (List of PWSA testimony and exhibits).

interest.<sup>333</sup> Both the Partial Settlement and PWSA's July, 2019 Board-approved policy sets out its plan for continuing lead service line replacements beyond 2019. PWSA's replacement plans fully incorporate the fact that it has been awarded a PENNVEST grant and loan.<sup>334</sup>

**99. PWSA's criteria or policy for replacing customer-owned lead service lines and whether or not this policy complies with 66 Pa. C.S. § 1304.**

PWSA discusses its policy for replacing customer-owned service lines in Section E of this Brief, *supra*. PWSA respectfully submits that its customer-owned replacement policies on water quality are non-public utility issues and are therefore not within the Commission's jurisdiction to review and, therefore, not subject to 66 Pa. C.S. § 1304. Nonetheless, they are reasonable in that PWSA has determined in conjunction with its 2017 Lead COA with the PADEP to "replace private service lines of residential customers when replacing the PWSA-owned public portion of the line in order to avoid partial" line replacements which, all experts agree, should be avoided.<sup>335</sup> Accordingly, PWSA's policy is reasonable and nondiscriminatory and fully consistent with the Public Utility Code. Even when PWSA is not replacing the public portion of the service line, PWSA has adopted a policy of reimbursing customers for a customer initiated replacement, requesting a financial contribution based on the customer's income with 75% of customers having their private line replaced either at no cost or at a substantial discount, with the remaining receiving a \$1,000 stipend.<sup>336</sup>

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<sup>333</sup> Settlement at ¶ 48, 50; Settlement at § V.

<sup>334</sup> See footnote 311.

<sup>335</sup> See PWSA Main Brief at Section E.1-2.

<sup>336</sup> See PWSA Main Brief at Section E.1 *supra*.



- 100. Whether the PWSA lead line replacement policy of limiting replacements to single family residential properties with services lines of one inch is consistent with 66 Pa. C.S. § 1501.**

See Section E.2 of this brief.

- 101 The relationship between the replacement program for customer-owned lead service lines and the potential implementation of a DSIC mechanism.**

PWSA intends to file a Distribution System Improvement Charge (“DSIC”) in its next rate case. At the present time PWSA anticipates requesting that some portion of the cost of its lead remediation program be included in its DSIC. However, its lead remediation efforts are not dependent on a Commission decision including permitting such costs to be included in the DSIC.

#### **F. OTHER ISSUES**

PWSA is not raising any other issues. PWSA will, however, respond to any other issues raised by the active parties.

### **VI. CONCLUSION**

For the reasons stated both herein (together with the Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Conclusions of Law) **and** in the Partial Settlement (together with the related statements in support of the Partial Settlement), the Authority respectfully requests that the ALJs issue a Recommended Decision consistent with the PWSA’s positions and recommendations in this proceeding and that the Commission:

- (1) approve the Partial Settlement, which is in accordance with the law, just and reasonable, and in the public interest;
- (2) approve the Compliance Plan which – as supplemented by the Compliance Plan Supplement and as modified by the Partial Settlement – satisfies the requirements of Chapter 32



of the Public Utility Code and the Commission's FIO, and will result in PWSA providing safe, reliable and reasonable service consistent with applicable law and Commission regulations;<sup>337</sup>

(3) reject any remaining issues, proposals, modifications and/or adjustments proposed by the active parties or other participants hereto which are inconsistent with the plans set forth in the Compliance Plan, as supplemented by the Compliance Plan Supplement and as modified by the Partial Settlement;

(4) declare the Commission's intention to refrain from subjecting PWSA to fines or penalties during PWSA's efforts to achieve full regulatory compliance so long as PWSA is operating under the terms and conditions of the Compliance Plan;

(5) approve PWSA's LTIIP (PWSA Hearing Exh. 3), which (a) conforms to the requirements of Chapter 13 of the Public Utility Code, the Commission's LTIIP Regulations, and the FIO and (b) is "adequate and sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service."<sup>338</sup>

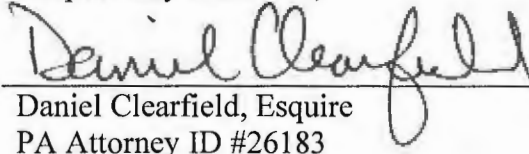
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<sup>337</sup> See 66 Pa.C.S. § 3204(c).

<sup>338</sup> See 66 Pa.C.S. § 1352(a).

Respectfully submitted,



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# Appendix A

## Proposed Findings of Fact

## APPENDIX A – PROPOSED FINDINGS OF FACT

### Background

#### *PWSA*

1. PWSA is a municipal authority. Petition for Approval of Compliance Plan at ¶ 1; PWSA St. C-4 (Quigley) at 30.
2. PWSA is a “body corporate and politic,”<sup>1</sup> organized and existing under the Municipality Authorities Act (“MAA”).<sup>2</sup> Id.
3. PWSA operates certain water and sewer system facilities (the “Water and Sewer System”) which are leased from the City of Pittsburgh, Allegheny County, Pennsylvania (“City” or “Pittsburgh”). Petition for Approval of Compliance Plan at ¶ 1.
4. PWSA provides water service to (a) 67 of the 90 neighborhoods in the City;<sup>3</sup> (b) The Borough of Millvale; and (c) portions of Townships of Reserve, O’Hara and Blawnox. Petition for Approval of LTIIP at ¶ 2.
5. PWSA further provides wastewater conveyance service and storm water service in the City. Petition for Approval of LTIIP at ¶ 2.

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<sup>1</sup> 53 Pa.C.S. § 5607(a).

<sup>2</sup> 53 Pa.C.S. § 5601, *et seq.* The current statute is substantively the same as the former one with respect to the issues discussed herein. The prior statute was the Act of May 2, 1945, P.L. 382, No. 164, §§ 1-19 (as amended, 53 P.S. § 301 to 322) was recodified and replaced by the MAA in 2001.

<sup>3</sup> The remainder of the city’s residents are serviced by three entities: West View Water Authority, which provides water service to a small area in the Western part of the City; Wilkinsburg-Penn Joint Water Authority, which provides water service in a small area in the Eastern part of the City; and, the Pennsylvania-American Water Company, which provides water service in the more Southern parts of the City.

6. PWSA provides service to approximately 110,000 residential, commercial and industrial customers. There are about 81,000 water service lines, which includes about 70,000 residential service lines. PWSA Hearing Exh. 1 (Compliance Plan) at 2, 20; PWSA Exh. RAW/C-44 at 1, 5. There are about 27,000 additional wastewater only customers. PWSA St. C-2SD (Lestitian) at 6.
7. PWSA's operations became subject to regulation by the Commission on April 1, 2018, pursuant to Chapter 32.<sup>4</sup> See Petition for Approval of Compliance Plan at ¶ 1.

### ***Compliance Plan***

8. Section 3204(b) of the Public Utility Code directs PWSA to file a "Compliance Plan" with the Commission that sets forth a plan to achieve full regulatory compliance with the Commission's legal and regulatory requirements.<sup>5</sup> See Petition for Approval of Compliance Plan at ¶ 3.
9. Section 3204(b) also establishes the regulatory timing of the filing of the compliance plan,<sup>6</sup> directing that the PWSA compliance plan be filed no later than Friday, September 28, 2018.<sup>7</sup> See Petition for Approval of Compliance Plan at ¶ 4.

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<sup>4</sup> 66 Pa.C.S. § 3202(a)(1); FIO at 6-8. PWSA's prior tariff, which was effective from March 30, 2018 to March 1, 2019, is available at: [http://www.puc.state.pa.us/about\\_puc/consolidated\\_case\\_view.aspx?Docket=M-2018-2640802](http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=M-2018-2640802)

<sup>5</sup> See 66 Pa.C.S. § 3204(b), which states, in part, that PWSA "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)."

<sup>6</sup> 66 Pa.C.S. § 3204(b) ("Within 180 days of the effective date of this section [66 Pa.C.S. § 3204] ....").

<sup>7</sup> FIO at 36; TIO at 18.

10. The Commission is required to review PWSA's Compliance Plan, and may order PWSA 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.<sup>8</sup> See Petition for Approval of Compliance Plan at ¶ 5.
11. PWSA filed a Compliance Plan on September 28, 2018.

***LTIIP***

12. Section 3204(b) of the Public Utility Code directs PWSA to file an LTIIP with the Commission<sup>9</sup> no later than Friday, **September 28, 2018**.<sup>10</sup> See Petition for Approval of LTIIP at ¶ 5.
13. PWSA filed its initial unified LTIIP on September 28, 2018.

**The Cooperation Agreement Between PWSA and City**

14. Effective January 1, 1995, PWSA and the City entered into the Cooperation Agreement providing for the City to furnish certain ongoing services to the Authority, for which the Authority compensates the City ("1995 Cooperation Agreement"). The 1995 Cooperation

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<sup>8</sup> 66 Pa.C.S. § 3204(c).

<sup>9</sup> See 66 Pa.C.S. § 3204(b), which states, in part, that PWSA "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.)."

<sup>10</sup> FIO at 36; TIO at 18.

Agreement was amended on March 21, 2011. PWSA St. C-2 (Lestitian) at 8; Compliance Plan, Appendix B.

15. On February 4, 2019, PWSA's Board voted to terminate the 1995 Cooperation Agreement, effective on 90 days' notice, or on May 5, 2019. PWSA St. C-2SD (Lestitian) at 3.
16. Following the vote to terminate the 1995 Cooperation Agreement, PWSA's Board began negotiating with the City to develop a new Cooperation Agreement that is fair to the City, its taxpayers, PWSA and its ratepayers. PWSA's objective in the negotiations was to revise the 1995 Cooperation Agreement so that annual payments reflect actual services being provided and the fair market value of those services. PWSA St. C-2 (Lestitian) at 8.
17. Subsequently, upon resolutions adopted by PWSA's Board, the termination of the 1995 Cooperation Agreement was extended to July 5, 2019 and to October 3, 2019. PWSA St. C-2R (Lestitian) at 7; PWSA St. C-2SD (Lestitian) at 3.
18. PWSA's Board approved a new Cooperation Agreement on June 7, 2019 ("2019 Cooperation Agreement"), which was presented to City Council on June 11, 2019. Public hearings were held on the proposed 2019 Cooperation Agreement on July 9, 2019. PWSA St. C-2SD (Lestitian) at 3.
19. City Council passed a resolution on July 24, 2019, authorizing the 2019 Cooperation Agreement between the City and PWSA to provide for the rights and obligations of each party with respect to the other and for payments and cooperation between the parties. PWSA St. C-2SD (Lestitian) at 3.

20. The resolution authorized the Mayor to enter into the 2019 Cooperation Agreement and further provided “that the 2019 Cooperation Agreement shall be in a form approved by the City Solicitor and shall, in addition to the terms and conditions specified therein, contain other terms and conditions that may be in the interest of the City.” If the Mayor makes any changes to the 2019 Cooperation Agreement, the Board will need to vote on whether to accept those changes. PWSA St. C-2SD (Lestitian) at 4.
21. Upon final approval by the City and the Board, PWSA will file the 2019 Cooperation Agreement with the Commission under Section 507 of the Public Utility Code and request that the Commission refer the 2019 Cooperation Agreement to the Office of Administrative Law Judge for a formal on-the-record proceeding. PWSA St. C-2SD (Lestitian) at 4; Partial Settlement at § III.P.1.
22. PWSA operating, temporarily, under the 2019 Cooperation Agreement while a Commission investigation is pending would allow PWSA’s ratepayers to benefit from the many terms in the 2019 Cooperation Agreement that are more favorable for PWSA and its ratepayers than the 1995 Cooperation Agreement. This approach would also be more transparent and structured than interacting with the City on an arms-length transactional basis. PWSA St. C-2SD (Lestitian) at 5-6.
23. No need exists for the Commission to determine as part of this proceeding whether the 1995 Cooperation Agreement complies with the provisions of the Public Utility Code because it has been renegotiated by PWSA and the City, with the 2019 Cooperation Agreement pending final approval, and PWSA’s plans to submit it to the Commission for review and approval. PWSA St. C-2SD (Lestitian) at 3-4.



24. The parties have agreed as part of the Partial Settlement that several principles should apply to the Commission's review of the 2019 Cooperation Agreement, including the following: (a) any payments to the City must be just, reasonable and substantiated; (b) the City and PWSA's relationship should be conducted on an arm's length "business-like" basis; and (c) services provided by the City to PWSA, and vice versa, should be identified with detailed breakdown and be charged based on the related cost of service. Partial Settlement at § III.P.5.

### **Municipal Properties and Public Fire Hydrants Within the City of Pittsburgh**

#### ***About PWSA & Relationship to City***

25. PWSA is a municipal authority originally established by the City of Pittsburgh in 1984 to function as a financing authority. Compliance Plan at 14.
26. Since 1995, PWSA has functioned as an operating authority under the City and – as memorialized in the Cooperation Agreement between the City and PWSA effective January 1, 1995 - PWSA has assumed responsibility for the day-to-day management, operation, maintenance, and improvement of virtually the entire City water supply, distribution, and wastewater conveyance/collection systems. Compliance Plan at 14 and Appendix B.

#### ***PWSA's plan for achieving full compliance***

27. PWSA's proposals for achieving full compliance are based on the specific circumstances of this case and the goal of achieving full compliance with the Commission regulations in a timely and efficient manner. PWSA St. No. C-1 (Weimar) at 21.

*Unmetered/unbilled City properties*

28. PWSA is aware of between 200-400 City-owned and/or operated locations where it either does not bill the City for water service or where it neither meters nor bills the City for water service. PWSA St. No. C-1 (Weimar) at 26.
29. PWSA's Professional Engineering Consultant is currently identifying and evaluating unmetered properties and flat-rate customers which includes the identification of properties within the City of Pittsburgh. PWSA anticipates that the work of identifying all unmetered and/or unbilled locations will be completed by June 29, 2020. Compliance Plan at 109-111; Partial Settlement at Section III.G.1; PWSA Exh. RAW/C-37
30. PWSA will install meters where they can be physically installed and PWSA anticipates that full meter installation can be completed within 5 years or by December 31, 2024. PWSA has also committed to accelerating this timeframe, if possible. PWSA St. No. C-1 at 26; Partial Settlement, Section III.G.1-2 at 18.
31. As non-municipal meters are installed and/or current flat rate customers are converted to metered customers, PWSA will bill the account in full pursuant to the applicable tariff rate. Partial Settlement, Section III.H.1 at 19; PWSA St. No. C-1R at 21 (Weimar).
32. PWSA will provide a class cost of service study reflecting all public fire hydrant costs and a rate design reflecting allocation of 25% of the costs to the City in its next rate case proposal. Partial Settlement Section I.1 at 19; PWSA St. No. C-1 at 31 (Weimar).
33. How and when the City of Pittsburgh will be required to pay for the costs for: (1) metering municipal properties; (2) future usage; and, (3) public fire hydrants is being

negotiated with the City of Pittsburgh to be included in a new Cooperation Agreement that will be subject to Commission approval. PWSA St. No. C-1 at 27 (Weimar).

34. PWSA's proposed approach regarding billing the City for the costs of meter installation, meter usage and public fire hydrants provides a reasonable transition timeframe during which the City can become knowledgeable about and plan for what will be significant new charges that the City will have to fund. Compliance Plan at 110-111; PWSA St. No. C-1 at 27 (Weimar); PWSA St. No. C-1R at 21 (Weimar).
35. The City of Pittsburgh has never been billed for water at unmetered locations and is neither aware of the amount of water it uses nor the dollar amount it will have to pay once billing begins. The City needs a reasonable amount of time in which to understand the cost impact of these obligation so that it can plan accordingly. Compliance Plan at 110; PWSA St. No. C-1 at 27 (Weimar).
36. Failure to secure the cooperation of the City of Pittsburgh regarding payments for PWSA services and just mandating that PWSA undertake the time and expense of metering and billing will likely increase PWSA's uncollectible expense without the desired result of ensuring that PWSA receives revenue for the services rendered. PWSA St. No. C-1 at 29.
37. PWSA proposes to split the costs of meter installation for municipal properties on a 50/50 basis with the City of Pittsburgh. PWSA St. No. C-1R at 18 (Weimar).
38. PWSA charges for water and wastewater conveyance. PWSA also passes through the wastewater treatment charges of ALCOSAN. The proposed billing approach for the City would treat PWSA's charges and ALCOSAN's charges in the same manner. PWSA St. No. C-1 at 31.

39. PWSA proposes the City to start paying for metered usage as follows: in year one, the City would pay 20% of all metered usage. In year two, the City would pay 40% of all metered usage. In year three, the City would pay 60% of all metered usage. In year four, the City would pay 80% of all metered usage. By year five, the City would be paying PWSA for 100% of all metered usage. Compliance Plan at 110; PWSA St. No. 1-C at 27 (Weimar).
40. It is difficult to make an accurate estimate of usage for the City and City-affiliated locations because of the lack of metering and the conditions of derelict buildings. PWSA St. No. C-1 at 28-29.
41. PWSA is evaluating the proposal for a flat rate for all unmetered any unbilled municipal and governmental properties/buildings served by PWSA. The development and assessment of a flat rate is complicated because buildings are not homogeneous and water line size is not necessarily indicative of use. PWSA St. No. C-1R at 23 (Weimar).

### Applicability of the Municipality Authorities Act Line Extension Provisions

42. Section 5607(d)(24) of the MAA contains lengthy and detailed formulas regarding fees (or assessments<sup>11</sup>) from those who desire, or are required, to connect to a municipal authority's sewer or water system.<sup>12</sup>
43. The Public Utility Code does not contain specific statutory provisions on line extensions.
44. The Commission has exercised its general authority pursuant to the Public Utility Code by promulgating regulations to set parameters for a water utility's rules for line extensions.<sup>13</sup>
45. The Commission's regulations also limit the costs that can be charged to water customers,<sup>14</sup> albeit with a different formula<sup>15</sup> than in Section 5607(d)(24) of the MAA.
46. PWSA's current practices are consistent with the statutory line extension mandates in the MAA. PWSA St. C-4 (Quigley) at 30, 33; PWSA St. C-4R (Quigley) at 36.

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<sup>11</sup> 53 Pa.C.S. § 5607(d)(21), (d)(22). A municipal authority may assess property owners for all or part of the costs of constructing sewer and water lines. In calculating assessments, the municipal authority may use either the benefits method, or the front-foot rule or both simultaneously on the same project. *Whitemarsh Twp. Auth. v. Elwert*, 196 A.2d 843 (Pa. 1964) (municipal authority could use both the front-foot method and the benefit method in its assessment of the sewer construction costs). The municipal authority may not recover more than the net project costs, after deducting any state or federal assistance, through the assessment process. *Bern Twp. Auth. v. Hartman*, 451 A.2d 567 (Pa.Cmwlth. 1982) (municipal authority was not permitted by statute to recover more than the project's construction costs). These assessments can be in an addition to a tapping fee. *See* 53 Pa.C.S. § 5607(d)(24).

<sup>12</sup> 53 Pa.C.S. § 5607(d)(24). *See also* 53 Pa.C.S. § 5607(d)(23) (relating to posting of financial security); 53 Pa.C.S. § 5607(d)(30) (relating to the owners right to construct the system); 53 Pa.C.S. § 5607(d)(31) (relating to reimbursing private persons who may have originally paid for construction of the facilities.).

<sup>13</sup> The parameters were issued under the Public Utility Code, 66 Pa.C.S. § 501, 504-506, 1301 and 1501, and were effective in February 1997. *Line Extensions, supra*. Note that there is no comparable provision for wastewater line extensions, although the "Model Tariff" for wastewater contains line extension provisions that track those for water lines. [http://www.puc.state.pa.us/general/onlineforms/doc/Sewer\\_Ex.doc](http://www.puc.state.pa.us/general/onlineforms/doc/Sewer_Ex.doc).

<sup>14</sup> The regulations at 52 Pa.Code § 65.21, 65.22, 65.23 do not expressly apply to wastewater service.

<sup>15</sup> 52 Pa.Code § 65.21.

47. Divergence from statutory mandates and PWSA's current practices would be complex and costly. *See* PWSA St. C-4R (Quigley) at 37-38.
48. Divergence from statutory mandates and PWSA's current practices could result in litigation and potential damage awards for charging customers an unauthorized line extension fee. PWSA St. C-4R (Quigley) at 36; *See Hidden Creek, L.P. v. Lower Salford Twp. Auth.*, 129 A.3d 602 (Pa.Cmwlth. 2015) (regarding developer's claim of excessive tapping fees in violation of the MAA).
49. Compliance with the formula in the Commission's regulations would result in non-compliance with the MAA. *See* PWSA St. C-4 (Quigley) at 32-34, stating that compliance with the requirements set forth in the Commission's regulations would make PWSA's process and procedures inconsistent with the MAA's statutory provisions.

### **Residency Requirement**

50. Following the City's Home Rule Charter, which contains a requirement for persons employed by the City to live in the City, the PWSA Board has adopted a domicile policy requiring PWSA employees to reside in the City. The policy applies to all employees except those specifically exempted from the domicile requirements by the PWSA's Executive Committee. PWSA St. C-2 (Lestitian) at 14.
51. The residency requirement makes it challenging for PWSA to meet its obligations under the Public Utility Code and Commission regulations. The domicile requirements restrict PWSA's ability to attract and retain capable and talented individuals with the necessary skills, as well as PWSA's ability to fulfill diversity goals. The domicile requirement

means that PWSA only has access to less than 16 percent of Allegheny County's population unless the individuals are willing to relocate to the City. PWSA St. C-2 (Lestitian) at 15-16.

52. The lack of qualified water treatment operators, plumbers, laboratory staff, project managers, welders, electricians and mechanics has required PWSA to engage consultants and operating staff who work full time as contracted workers. In addition, PWSA also engages specialty contractors to address everyday maintenance and operational needs. PWSA St. C-2 (Lestitian) at 16.
53. PWSA is taking all steps that it can to address the challenges presented by the residency requirement and is working to stabilize its workforce through hiring of permanent workers in every position. PWSA St. C-2R (Lestitian) at 18-19.
54. No evidence has been presented to link PWSA's residency requirement to a lack of compliance with the Public Utility Code and Commission regulations. I&E St. 2 (Patel) at 36-41.
55. Imposition of a residency requirement is a prerogative of a utility's board of directors.

#### **Lead Remediation Issues**

56. There is no detectable lead in PWSA's water when it leaves the treatment plant and travels through PWSA's water mains. PWSA Hearing Exh 1, Appendix 1 (Compliance Plan) at 119.
57. Lead can enter drinking water through lead services lines that serve individual customers. PWSA Hearing Exh 1, Appendix 1 (Compliance Plan) at 119.

58. A residential service line is made up of a “public” portion owned by PWSA and a “private” portion owned by the property owner.
59. In 2018, it was **estimated** that there were about 12,300 residential public lead service lines within PWSA’s water system. PWSA Hearing Exh. 3 (LTIIP) at 28. PWSA is working to update/complete its inventory of residential lead service lines by December 31, 2020. PWSA St. C-1R (Weimar) at 60-61; PWSA C-1SD (Weimar) at 24; PWSA Exh. RAW/C-44; PWSA St. No. C-1R-Supp. (Weimar) at 2, 5-6; PWSA St. No. C-1RJ (Weimar) at 4, 16-17. While that inventory is not yet complete, the number of residential customers potentially with public lead service lines (after 2020) is estimated to be around 6,000, and the number of residential private lead service lines could be between 8,000 and 20,000. PWSA Hearing Exh. 3 (LTIIP) at Table 2-7; UNITED St. C-1SUPP-R (Miller) at 5 and at Appendix A, 1.
60. PWSA does not have an estimated number of non-residential lead or galvanized iron service lines (which have only component). PWSA St. C-1R (Weimar) at 60-61; PWSA C-1SD (Weimar) at 24; PWSA Exh. RAW/C-44; PWSA St. No. C-1R-Supp. (Weimar) at 2, 5-6; PWSA St. No. C-1RJ (Weimar) at 4, 16-17.
61. Federal and state regulations require that public drinking water suppliers regularly test for contaminants, such as lead.
62. PADEP monitors water suppliers to ensure that they are complying with testing requirements to safeguard our public drinking water supplies.



### ***Corrective Measures***

63. Corrective (or remedial) actions to mitigate the release of lead from lead service lines to drinking water include corrosion control, public education and the physical replacement of the lead service lines. *See* UNITED St. C-2SUPP-R (Welter), Appendix A at 17.

### ***Corrosion Control***

64. PWSA started corrosion control (using orthophosphate), once it obtained the required approvals from the Pennsylvania Department of Environmental Protection (“PADEP”). PWSA Hearing Exh. 3 (LTIP) at § 8.2; Partial Settlement at § III.M.2.c, III.XX; PWSA St. C-1RJ (Weimar) at 17-18; PWSA St. C-1R-Supp (Weimar) at 7; PWSA St. C-1SD (Weimar) at 22-23; PWSA St. C-1R (Weimar) at 2-3, 37-38; PWSA St. C-1 (Weimar) at 48-49.
65. Orthophosphate will very shortly reduce lead levels in residential tap water to well below PADEP actions levels. *See* Partial Settlement at § III.M.2.c, III.XX; PWSA St. C-1RJ (Weimar) at 17-18; PWSA St. C-1R-Supp (Weimar) at 7; PWSA St. C-1SD (Weimar) at 22-23; PWSA St. C-1R (Weimar) at 2-3, 37-38; PWSA St. C-1 (Weimar) at 48-49.

### ***Replacement of Lead Service Lines***

66. PWSA has been engaged in public education, and has been replacing lead service lines owned by PWSA. PWSA Hearing Exh. 3 (LTIP) at § 2.2, 2.2.1, 2.2.2; PWSA Exh. RAW/C-46 (July 2019 Policy).
67. Under other programs established by it, as long as the property owner consented, PWSA has also replaced the private-side lead service lines when PWSA was replacing the

public-side of the lead service lines. *See, e.g.*, PWSA Hearing Exhibit 1 (Compliance Plan) at 2018 Lead Line Replacement Program; PWSA St. No. C-1 at 54-55.

68. PWSA is committed to efforts to encourage private-side line replacements and to reduce the number of partial (public-only) lead service line replacements. PWSA Hearing Exh. 3 (LTIP) at § 8.2.
69. Under a loan and a grant from PENNVEST (registered at PUC Docket No. S-2019-3007162), PWSA will replace 4,400 public lead service line connections and 3,400 private side service line replacements at a cost of \$49,128,404 in 2019 and 2020. PWSA St. C-1 (Weimar) at 51, 54; PWSA Exh. RAW/C-23.
70. Table 2-8 of the LTIP presents the projected current and “accelerated” SDWMR program costs. PWSA Hearing Exh. 3 (LTIP) at 29.

**Table 2-8**  
**Current and Proposed Accelerated SDWMR Program**

Year	Existing Budgeted SDWMR Program*	Accelerated SDWMR Program
2019	\$10,880,000	-
2020	\$54,340,000	-
2021	\$54,630,000	\$114,770,000
2022	\$57,170,000	\$120,060,000
2023	\$58,880,000	\$123,610,000
2024	\$60,700,000	\$127,390,000
2025	\$61,570,000	\$129,160,000
2026	\$63,370,000	\$133,020,000

\*Costs shown in Table 2-6 (previously presented) for years 2022 through 2024 represent incurred expenses and not the total budget of the project.

### ***2017 Lead COA***

71. In November 2017, PWSA entered into a Consent Order and Agreement (Lead COA) with the Pennsylvania Department of Environmental Protection (PADEP) to resolve regulatory issues related to lead service line replacements, corrosion control treatment and other related matters. UNITED St. 4 (Welter) at Appendix D.
72. The Lead COA lays out actions for PWSA's compliance with the "Lead Action Level" under PADEP's "Lead and Copper" Regulations. Id.
73. The Lead COA also requires implementation of a corrosion control program. Lead COA at § 3.b. It also contains deadlines for completing a lead service line system inventory and performing lead service line replacements. Lead COA at § 3.c.; Lead COA at § 3.d, 3.e.
74. Specifically, with regard to replacements, PWSA agreed to replace at least 7% of its existing public lead service lines in each year in which its lead levels in the prior six months fall above the "Action Level," as well as to provide customer notice, follow-up testing and public education whenever it exceeds the Action Level. *See* PWSA St. C-1RJ (Weimar) at 2; Lead COA at § 3.e, 3.g.
75. PWSA also agreed to a "Community Environmental Project" in which PWSA will spend up to \$1.8 million to replace private lead service lines for homeowners; this is in addition to the other replacements agreed to in the Lead COA. Lead COA, § 4.

### ***2019 July Policy***

76. PWSA has voluntarily agreed to replace residential private lead service lines whenever it replaces the public side, and to create a plan for the eventual replacement of all

residential lead service lines – public AND private. Settlement, Lead Remediation, § III.OO to III.YY.

77. PWSA has committed to voluntary efforts to fully remediate lead at residential properties on its system in PWSA's 2019 Lead Service Line Replacement Policy. Exhibit RAW/C-46 (July 2019 Policy).
78. This July 2019 Policy will eventually address all known residential lead service lines in PWSA's system. PWSA St. C-1RJ (Weimar) at 4.
79. PWSA has voluntarily committed to formulating a plan that will, over time, completely eliminate lead in its water system (not including private customers who simply refuse to have their private lines replaced – whether free of charge or with a stipend or non-residential customers who may replace their galvanized iron lines at their expense))
80. It has also committed to establishing an estimate of all lead service lines in its service territory (connected to a residential structure) by the end of 2020, and to formulating a plan and timeline for removing the known public and private-side lines connected to a residential structure by March 31, 2021. Partial Settlement at § III.QQ.2.a.
81. It also committed to reporting on whether it successfully replaced (at least) 10 miles of Small Diameter Water Main in "Priority Lead Neighborhoods," and, if not, explain how PWSA plans to address those factors and endeavor to the maximum extent possible to reach the 10 mile target moving forward. Partial Settlement at § III.QQ.3; Partial Settlement at § III.VV.2.a.
82. PWSA has already committed to replacing all known residential lead service lines in its service territory where the property owner consents to the replacement and PWSA does

not encounter technological impediments in replacing the line. PWSA St. C-1RJ (Weimar) at 9-10.

***Income-Based Customer-Initiated Replacement***

83. Based on an analysis of demographics in its service territory, over 50% (53%) of households in its service territory would be fully reimbursed for a private-side lead line replacement requested by a customer who does not wish to wait for PWSA to replace his/her private lead service line as part of its SDWMR program and 75% would qualify to receive a reimbursement of 50% or greater. The remaining customers would still receive a \$1,000 stipend to help defray the costs of a private-side lead line replacement.
84. PWSA's income-based reimbursement plan is reasonably similar to the private service replacement programs implemented by other utilities.
85. PWSA is willing to modify the program so that customers need not come up with the full cost of the replacement and then be reimbursed.
86. PWSA is also willing to work with the CLRAC to enable tenants of multi-family dwellings (that have a private service line of one inch or smaller connected to a public-side service line), to qualify for the income-based reimbursement based upon the income of the tenants rather than the landlord, and to commit to consulting with CLRAC regarding development of its outreach program. PWSA St. C-1RJ (Weimar) at 11-12.

***Partial Settlement***

87. PWSA and the Parties were able to agree on the details of other issues associated with lead remediation, including: completing the inventory of all public and private-side lead lines, interior plumbing inspections (when PWSA replaces a water meter), a process for

testing the effects of meter replacement on lead levels (and an action plan if unacceptable lead levels are found), procedures and standards for tap water testing and filter distribution, as well as bottled water and flushing assistance for extremely high lead levels. Partial Settlement at § III.QQ.3; Partial Settlement at § III.RR; Partial Settlement at § III.TT.1, III.TT.3; Partial Settlement at § III.TT, III.UU.

***Replacement of Private Service Lines***

88. Requests by the opposing parties to require PWSA to replace all residential private side service lines at ratepayer expense will impose additional, unnecessary costs on PWSA and its ratepayers who are already bearing a heavy burden for remediation.

***Replacement of Non-Residential Private Side Service Lines***

89. Lead service lines were not typically used for non-residential customers because lead lines were usually one inch in diameter or smaller and non-residential service lines are larger than one inch in diameter. PWSA St. No. C-1 (Weimar) at 51-52.
90. There are a small number of private side galvanized iron lines connected to non-residential locations. PWSA St. C-1R-Supp (Weimar) at 3-5; PWSA St. C-1RJ (Weimar) at 10-11.
91. None of the non-residential customers that have a private lead or galvanized iron service line also have a lead or galvanized iron public side line. PWSA St. C-1R-Supp (Weimar) at 4.

# APPENDIX B

## Proposed Conclusions of Law

## APPENDIX B – PROPOSED CONCLUSIONS OF LAW

### General

#### *PWSA*

1. The provisions in the Public Utility Code applies to PWSA in the “same manner as a public utility.” 66 Pa.C.S. § 3202(a)(1).
2. Act 65 continues to recognize that PWSA is a municipal authority.
3. Municipal authorities are entities organized and created under the Municipality Authorities Act (“MAA”), to accomplish certain purposes. *See also Evans v. West Norriton Township. Municipal Authority*, 87 A.2d 474 (Pa. 1952) (stating that, “[a] Municipal Authority is defined by the Act as ‘a body politic and corporate.’ Its members are appointed by elected public officials. It receives a charter from the Commonwealth of Pennsylvania, which grants it certain characteristic attributes of a corporation. It is authorized by law and by its charter to perform vast private as well as certain limited public functions”).
4. PWSA, as a municipal authority, is an independent agency of the Commonwealth.<sup>1</sup>

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<sup>1</sup> *Commonwealth v. Erie Metropolitan Transit Auth.*, 281 A.2d 882 (Pa. 1971) (“[t]his Court has consistently held that municipal authorities are not the creatures, agents, or representatives of the municipalities which organize them, but rather are ‘independent agencies of the Commonwealth, and part of its sovereignty,’” quoting *Whitemarsh Twp. Auth. v. Elwert*, 196 A.2d 843 (Pa. 1964)); *Simon Appeal*, 184 A.2d 695 (Pa. 1962) (citing *Commonwealth ex rel. McCreary v. Major*, 22 A.2d 686 (Pa. 1941), it was held that a member of a board of a municipal authority created under the act of 1935 was a public official by reason of the fact that such entity is an independent agency of the Commonwealth and part of the sovereignty of the state); *Rhoads v. Lancaster Parking Auth.*, 520 A.2d 122, 126 (Pa. 1987) (“Municipal authorities are independent corporate agents of the Commonwealth, which exercise governmental, as well as private corporate power, in assisting the Commonwealth in meeting the needs of its citizens”); *Bristol Twp. Water Auth. v. Lower Bucks County Joint Mun. Auth.*, 567 A.2d 1110 1113, (Pa.Cmwlth. 1989) (“[h]owever, as noted above, an authority which has been incorporated under the Act becomes an independent Commonwealth agency not subject to the control of the incorporating township”); *White Rock Sewage Corp. v. PUC*, 578 A.2d 984, 987 (Pa.Cmwlth. 1990) (“[m]unicipal authorities are not creatures, agents, or



5. PWSA, as a municipal authority, possess only the powers to act that General Assembly has granted to it. *Naylor v. Township of Hellam*, 773 A.2d 770, 773-774 (Pa. 2001). In addition, the Commission is a creature of statute and has only those powers which are expressly conferred upon it by necessary implication. *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (Pa. 1977).

### ***Compliance Plan***

6. The compliance plan, as modified by the Partial Settlement, adequately ensures and maintains the provision of adequate, efficient, safe, reliable and reasonable service and is in the public interest.

### ***LTIP***

7. The LTIP conforms to the requirements of Chapter 13 of the Public Utility Code, the Commission's LTIP Regulations, and the FIO and is "adequate and sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa.C.S. § 1352(a).

### **The Cooperation Agreement Between PWSA and City**

8. PWSA is required to file the 2019 Cooperation Agreement with the Commission at least 30 days prior to its effective date. 66 Pa.C.S. § 507.

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representatives of municipalities, which organize them, but rather are independent agencies of the Commonwealth and a part of its sovereignty" quoting *Highland Sewer & Water Auth. v. Engelbach*, 220 A.2d 390 (Pa. Super. 1966); *Lehigh-Northampton Airport Auth. v. Lehigh County Bd. of Assessment Appeals*, 889 A.2d 1168, 1176 (Pa. 2005) (the "fundamental nature" of a municipal authority is that of "a corporate agency of the state, and not a child of a municipality").

9. The Commission has the power to vary, reform or revise the 2019 Cooperation Agreement. 66 Pa.C.S. § 508.

#### **Municipal Properties and Public Fire Hydrants Within the City of Pittsburgh**

10. PWSA's proposed resolutions are being negotiated with the City to be included in a new Cooperation Agreement that will be subject to Commission approval in a future on-the-record proceeding.

#### **Applicability of the Municipality Authorities Act Line Extension Provisions**

11. As creatures of legislation, municipal authorities and the Commission each possess only the power that the General Assembly has granted to them. *Naylor v. Township of Hellam*, 773 A.2d 770, 773-774 (Pa. 2001); *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (Pa. 1977).
12. PWSA is (and other municipal authorities are) generally empowered to charge "reasonable and uniform" fees for services provided.<sup>2</sup> 53 Pa.C.S. § 5607(d)(9).
13. The power of PWSA (and other municipal authorities) to charge fees for line extensions was expressly limited by the General Assembly. 53 Pa.C.S. § 5607(d)(24).
14. The statutory formulas in Section 5607(d)(24) of the MAA cannot be legally circumvented by municipal authorities.
15. The Public Utility Code, 66 Pa.C.S. § 101, et seq., does not contain specific provisions on line extensions.

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<sup>2</sup> PWSA may also establish certain rates by contract. See 53 Pa.C.S. § 5607(d)(19).

16. Absent other applicable statutory provisions, the Commission has discretion to define the appropriate amount of line extension fees and the circumstances for customer contribution to an extension of service by virtue of its authority to set just and reasonable rates and to direct the provision of adequate and reasonable services. 66 Pa. C.S. § 1301, 1501. *See Popowsky v. PUC*, 853 A.2d 1097 (Pa. 2004), *affirmed*, 910 A.2d 38 (Pa. 2006).
17. The Commission exercised its general authority pursuant to the Public Utility Code by promulgating regulations to set parameters for a water utility's rules for line extensions. *See Line Extension Order*, 27 Pa.B. 785, 799 (February 15, 1997).
18. PWSA is required by the MAA to follow the statutory line extension formulas in the MAA in lieu of the line extension formula in the Commission's regulations.
19. If the Commission's line extension rules are determined to apply, a waiver of those rules, to permit PWSA to continue to use the line extension formulae set forth in the MAA, is in the public interest.

#### **Residency Requirement**

20. The Commission is not authorized to act as a super board of directors or to micromanage the day-to-day operations of the utilities under its jurisdiction. *See Bell Tel. Co. of Penna. v. Driscoll*, 118 A.2d 912, 916 (Pa. 1941); *Metropolitan Edison Co. v. Pa. PUC*, 437 A.2d 76 (Pa.Cmwlth. 1981); *Pa. PUC v. Philadelphia Electric Co.*, 501 Pa. 153, 159, 460 A.2d 734 (1983).
21. The Commission lacks authority to interfere with general management decisions absent a showing of abuse of discretion or arbitrary action of the public utility. *See Joint*

*Application of Verizon Comm., Inc. and MCI Inc. for Approval of Agreement and Plan of Merger*, Docket No. A-310580F0009 (Order entered January 11, 2006), 2006 Pa. PUC LEXIS 22 \*218, *aff'd Popowsky v. Pa. PUC*, 937 A,2d 1040 (Pa. 2007) (management decisions required to achieve reasonable rates and service are generally left to the public utility).

22. If the Commission were to find that PWSA's residency requirements caused PWSA to provide inadequate service or to make its rates unreasonable, the Commission would have authority to direct PWSA to eliminate or modify its requirements.

#### **Lead Remediation Issues**

23. The Commission does not have jurisdiction over water quality issues.

#### ***Replacement of Private Service Lines***

24. PWSA has no legal or regulatory obligation to repair or replace a customer's private service line.
25. The Commission does not have the legal authority to order PWSA to replace private service lines for water quality purposes.
26. The Commission has consistently held that utility private service lines are NOT the responsibility of the utility (with the resulting cost of repair or replacement having to be absorbed by utility's ratepayers.) *See, PUC v. Mercer Gas*, Docket No. R-80091297, Opinion and Order entered August 21, 1981; 1981 Pa. PUC LEXIS 40.

27. Legislation has established that if a public utility replaces a customer-owned lead service line it may recover the cost of such a replacement in its rates, but only if the utility chooses to do so. 66 Pa.C.S. 1311(b); 72 P.S. § 1719-E(c), (d).

***Income-Based Customer-Initiated Replacement***

28. PWSA's income-based customer initiated replacement program reasonably balances the policy goals of effectuating the full replacement of lead service lines throughout its system as soon as reasonably possible while controlling ratepayer costs and being fair to ratepayers generally. See PWSA St. C-1RJ (Weimar) at 3-4, 15.

***Replacement of Non-Residential Private Side Service Lines***

29. The Commission does not have the legal authority to direct PWSA to replace lead or galvanized iron non-residential private service lines because: (1) the replacement would be for water quality improvement purposes over which the Commission does not have jurisdiction; and (2) the replacement would be of private facilities, which are the responsibility of the customer – not PWSA.
30. Whether PWSA should or shouldn't replace a lead or galvanized iron service line (PWSA has treated galvanized iron lines the same as lead lines since at least the implementation of its 2018 Lead Remediation Policy)<sup>3</sup> is a water quality issue, regulated by PADEP – not the Commission.

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<sup>3</sup> PWSA St. C-1R-Supp. (Weimar) at 3-4. Galvanized iron service lines (serving certain residential properties and dual use properties) are included in PWSA's Lead Service Line Replacement Policy due to concerns that galvanized iron service lines were typically joined to a lead public service line and lead leaching from

31. PWSA is properly treating residential and nonresidential private lines differently – because non-residential customers do not have a “public” portion of their service line and, therefore, there is no concern about “partial” replacements.
32. PWSA’s decision not to include nonresidential customers in any reimbursement program – that would result in remaining residential and (unaffected) nonresidential customers paying all or a portion of the cost of a business owner’s lead or galvanized steel private service line – is reasonable and certainly does not constitute unreasonable discrimination.

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the public lead segment can be deposited on the inside of galvanized iron piles, leading to lead leaching if only the public side is replaced in these instances. *Id.*

# APPENDIX C

## Proposed Ordering Paragraphs

## **APPENDIX C – PROPOSED ORDERING PARAGRAPHS**

### **IT IS ORDERED:**

1. That the terms and conditions contained in the Joint Petition for Partial Settlement submitted by the Authority, Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Pittsburgh UNITED and Pennsylvania-American Water Company are approved and adopted without modification.
2. That the Compliance Plan, as supplemented by the Authority and as modified by the Joint Petition for Partial Settlement, is approved and is in accordance with the law and in the public interest – until changed on a going-forward basis.
3. That the Authority will not be in violation of applicable provisions of the Public Utility Code, the Commission’s regulations and/or the Commission’s Order if it is operating under the terms and conditions of the Compliance Plan as approved by this Order.
4. That the Authority shall file any necessary tariff supplements, consistent with this Order, within sixty (60) days of entry of this Order, with a ten (10) day comment period to follow.
5. That the Petition for Approval of a Second Long-Term Infrastructure Improvement Plan (LTIIP) filed by the Authority and as modified by the Authority is approved and is in accordance with the law and in the public interest – until changed on a going-forward basis.
6. That a copy of this Order be placed at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater) and Docket Nos. P-2018-3005037 (water) and P-2018-3005039 (wastewater).