



September 30, 2019

The Honorable Mark A. Hoyer
Deputy Chief Administrative Law Judge
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The Honorable Conrad A. Johnson
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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, -2640803

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

Dear Judge Hoyer and Judge Johnson,

Enclosed, please find the **Reply Brief of Pittsburgh UNITED** and the **Statement of Pittsburgh UNITED In Support of the Joint Petition for Partial Settlement**. These documents were filed electronically with the Commission today in the above noted proceedings. Copies have been served on all parties of record consistent with the attached Certificate of Service.

Please do not hesitate to contact me or my co-counsel with any questions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Elizabeth R. Marx".

Elizabeth R. Marx
Co-Counsel for Pittsburgh UNITED

CC: Certificate of Service
Secretary Rosemary Chiavetta

Enc.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Chapter 32 of the	:	Docket No.	M-2018-2640802
Public Utility Code Re Pittsburgh	:		M-2018-2640803
Water and Sewer Authority	:		

Petition of the Pittsburgh Water and Sewer	:	Docket No.	P-2018-3005037
Authority for Approval of Its Long-Term	:		P-2018-3005039
Infrastructure Improvement Plan	:		

Certificate of Service

I hereby certify that I have this day served copies of the **Reply Brief of Pittsburgh UNITED** and the **Statement of Pittsburgh UNITED In Support of the Joint Petition for Partial Settlement** upon the parties of record in the above-captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

VIA FIRST CLASS MAIL AND EMAIL

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Infrastructure Improvement Plan	:		

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I. INTRODUCTION

PWSA insists that the Commission is powerless to stop it from implementing an income-based replacement program, even though that program will slow substantially the pace of lead pipe removal and disadvantage low income customers. But lead service line removal is not a perk to be given some customers and not others. Access to safe drinking water is a right of all customers and PWSA's most basic responsibility—a responsibility PWSA has failed to fulfill for at least three years running. The community concerns PWSA dismisses as “sentiment” are grounded in science and data, unrebutted by PWSA, showing that lead service line removal is the only way to eliminate grave health risks from lead-contaminated water.¹ The effective lead remediation strategy that the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and Pittsburgh UNITED call for is not “above and beyond” what is required by law.² It is necessary to ensure and maintain the safe, reliable service mandated by the Public Utility Code.

As discussed below, PWSA has not shown that its income-based program will save ratepayers money or ensure safe service. It also fails to justify its decision to scale back its lead service line replacement efforts by terminating the neighborhood-based program when the evidence shows that offering free, utility-initiated lead service line replacements is necessary for safe service. The Commission has jurisdiction to order PWSA to offer free lead service line replacements arranged by PWSA, and should do so.

¹ PWSA Main Br. at 54.

² Id.

II. ARGUMENT

A. PWSA has not met its burden to show that its income-based reimbursement program will ensure safe service

In an attempt to save its proposed income-based reimbursement program, PWSA offers a variety of concessions and arguments in support of the program's structure. But PWSA still has not met its burden to show that its income-based reimbursement program for lead service line replacement will ensure safe and reasonable service. Based on the record in this matter, it cannot make such a showing.

PWSA first appears to abandon the program's most troubling component: requiring customers to pay up front for service line replacements.³ PWSA now says that it is "willing" to structure the program so that PWSA will pay private contractors directly.⁴ But despite this vague and belated statement, PWSA falls short of making any actual commitment to do so, and it has not submitted any plan to effectuate these direct-to-contractor payments in a way that minimizes the burdens on low and moderate income customers. Eliminating reimbursements, moreover, will not transform this program into an effective lead service line replacement strategy. The program's sliding scale payment structure for customer contributions and its reliance on customers to initiate replacements will still significantly suppress participation, particularly among low income customers.⁵ PWSA's "willing[ness]" to restructure the income-based reimbursement program does not demonstrate that its lead remediation programs will ensure safe service.

³ Id. at 63, 73-74.

⁴ Id. at 73-74.

⁵ See Pittsburgh UNITED Main Br. at 30-36.

PWSA also contends that its service line replacement policy is reasonable because it compares favorably to those of the Philadelphia Water Department, York Water Company, and Pennsylvania American Water Company.⁶ Like PWSA, each of these utilities replaces private-side lead service lines at no direct cost to customers during water main replacements.⁷ Unlike PWSA, however, York Water and Pennsylvania American Water both arrange and pay for the replacement of private-side lead service lines not scheduled for removal through a main replacement program.⁸ Their approach is preferable to PWSA's income-based reimbursement program, which forces many customers to pay a share of the replacement cost and requires all customers to initiate the replacement.⁹ It is also consistent with the relief Pittsburgh UNITED seeks here.

PWSA next offers a potpourri of arguments in an attempt to show that its income-based reimbursement program “reasonably balances” the goal of replacing all lead service lines “as soon as reasonably possible” with the goal of minimizing burdens on ratepayers.¹⁰ PWSA's “reasonable balance” presumes that the income-based program will be affordable to customers, cheaper for PWSA, and effective at removing lead pipes. But the evidence does not support PWSA on any of these points.

First, while PWSA claims that its sliding scale is fair because it demands payments from only those customers who have “the wherewithal to make a contribution,”¹¹ it offers no analysis showing that customers can afford replacements at the proposed reimbursement rates. To the

⁶ PWSA Main Br. at 72-73.

⁷ OCA St. 2R-Supp, at 3.

⁸ Id. York Water customers must pay the difference, if any, between the utility's actual and average costs of lead service line replacement.

⁹ See Pittsburgh UNITED St. C-1SUPP-R, at 5-8.

¹⁰ PWSA Main Br. at 74.

¹¹ Id. at 73.

contrary, the evidence shows that some customers earning between 301 and 400 percent of the federal poverty line will not be able to afford the more than \$1,000 contribution PWSA expects them to put towards lead service line replacement.¹² The sliding scale disadvantages low and moderate income customers and will deter them from pursuing lead service line replacements.¹³

Second, PWSA asserts that its income-based program will save ratepayers money compared to a program offering free, utility-initiated replacements.¹⁴ As with its statements about customer affordability, PWSA's assertions about cost savings are not supported by reliable analysis. The back-of-a-napkin budget presented in Mr. Weimar's supplemental direct testimony was revised days later, dropping expected savings by \$4 to \$7 million.¹⁵ There is no reason to believe that PWSA's unsupported second estimate is any more accurate than its first.

Third, PWSA avers that its program reduces burdens on ratepayers because customer-initiated lead service line replacements will cost less than utility-initiated replacements.¹⁶ PWSA's sole basis for this statement, however, is that the average replacement cost reported by a "smallish" number of customers (11, to be exact) is below PWSA's average of \$5,500 per line.¹⁷ PWSA calculated its \$5,500 average from over 1,000 private-side lead service line replacements.¹⁸ The average from just 11 replacements is not a dependable predictor of customer-initiated replacement costs. Moreover, PWSA does not explain why individual customers are getting a better price on one-off lead service line replacements than PWSA

¹² OCA St. 2R-Supp, at 5-6.

¹³ Pittsburgh UNITED Main Br. at 30.

¹⁴ See PWSA Main Br. at 74-75.

¹⁵ Pittsburgh UNITED St. C-1SUPP-R, at 11 (explaining that PWSA's initial estimated savings of \$12 million to \$25 million was revised to \$8 million to \$18 million).

¹⁶ PWSA Main Br. at 63.

¹⁷ PWSA Hearing Ex. 5, ¶ 2.

¹⁸ See PWSA Hearing Ex. 1, LTIIP Appendix C, at 2 (2018 Lead Service Line Replacement Policy ¶ 3, stating that customer reimbursements will be based on PWSA's private-side replacement costs during the 2018 construction period); PWSA St. C-1, at 53 (stating that PWSA performed 1,324 private-side lead service line replacements in 2018).

receives when contracting for hundreds of replacements at a time.¹⁹ If customers are successfully negotiating for lower prices, it would speak to the need for PWSA to improve its contracting procedures, not to the “efficiency” of shifting that burden onto customers.

Next, PWSA still has not justified the high administrative costs of its income-based program. Testimony from Pittsburgh UNITED and the Bureau of Investigation and Enforcement observed that the \$1,000 per replacement PWSA estimates it will cost to verify customer income was excessive and would be better spent replacing lead lines.²⁰ PWSA’s only response is to claim, without support, that actual costs are unlikely to “reach that level.”²¹ PWSA’s self-serving guesswork is not substantial evidence. It is clear from the record that offering free lead service line replacements would reduce administrative expenditures by eliminating the need for PWSA to perform income verifications.²²

Finally, despite arguing at length about promised savings, notably absent from PWSA’s brief is any evidence that the income-based reimbursement program would be an effective means of removing lead service lines from its system. Testimony from Pittsburgh UNITED, the Bureau of Investigation and Enforcement, and the Office of Consumer Advocate demonstrates that requiring customers to arrange and pay for replacements would significantly depress customer participation, particularly among low income customers,²³ who face a disproportionate risk of lead exposure.²⁴ PWSA’s accounting does not include the toll that increased and prolonged lead

¹⁹ See Pittsburgh UNITED St. C-2SUPP-R, at 7. PWSA refers to its “efforts to make the private contractor replacement as efficient as possible,” but the record contains no evidence of any such efforts. PWSA Main Br. at 63.

²⁰ Pittsburgh UNITED St. C-1SUPP-R, at 11; I&E St. 4-RS, at 6; see also OCA St. 2R-Supp, at 5.

²¹ PWSA Main Br. at 64.

²² Pittsburgh UNITED St. C-1SUPP-R, at 14.

²³ I&E St. 4-RS, at 6-8; OCA St. 2R-Supp, at 5-7; Pittsburgh UNITED St. C-1SUPP-R, at 7-13; Pittsburgh UNITED St. C-2SUPP-R, at 6-7; Pittsburgh UNITED St. C-3SUPP-R, at 3-5.

²⁴ Pittsburgh UNITED St. C-3, at 7-8, 13; Pittsburgh UNITED St. C-3SUPP-R, at 4-5.

exposure takes on individuals and communities.²⁵ PWSA responds that customers who cannot participate in the income-based program can just wait for their lead service lines to be replaced through the small-diameter water main program.²⁶ PWSA neglects to mention that the glacial pace of small-diameter water main replacement means that those customers could be waiting for another three decades.²⁷

Pittsburgh UNITED shares PWSA's goal of minimizing financial burdens on ratepayers, which is why it has consistently advocated for PWSA to conduct lead service line replacements in the most efficient manner possible.²⁸ Pittsburgh UNITED also recognizes that PWSA has taken many positive steps in improving its lead remediation efforts. The income-based reimbursement program, however, is neither efficient nor effective, and it will leave a large number of customers—especially low income customers—at risk of lead exposure. Consequently, PWSA has not met its burden to show that its lead remediation efforts will ensure safe and reasonable service.

B. The requested relief is necessary and timely

PWSA's reliance on corrosion control treatment to meet its safe service obligation is misplaced.²⁹ Contrary to what PWSA claims, lead service line removal is critically necessary “from a health and safety standpoint” because chemical treatment can take years to be optimized and become fully effective and, in any event, will not ensure long-term safe service.³⁰ In view of the limitations of chemical treatment, the relief sought by Pittsburgh UNITED is not premature.

²⁵ Pittsburgh UNITED St. C-3, at 6-8; Pittsburgh UNITED St. C-1SUPP-R, at 12.

²⁶ See PWSA Main Br. at 73.

²⁷ Pittsburgh UNITED St. C-2, at 26 & n.110.

²⁸ See, e.g., Pittsburgh UNITED St. C-2, at 21-22, 27-28; Pittsburgh UNITED St. C-2SUPP-R, at 7-8.

²⁹ PWSA Main Br. at 58, 61, 80.

³⁰ *Id.* at 58-59.

1. *Orthophosphate treatment is not sufficient to ensure safe service*

PWSA's contention that orthophosphate treatment will "very shortly" reduce lead levels "to virtually non-detectable levels" is contradicted by the record.³¹ As Pittsburgh UNITED witness Mr. Gregory Welter testified, PWSA's corrosion control treatment is not yet effective; lead levels in PWSA's water remain high and may continue to be elevated well into 2020.³² Even after lead levels begin to come down, it could take "several years before orthophosphate's benefits are fully realized and lead release from PWSA's pipes is stabilized."³³ The experiences of water systems in other cities such as Washington, DC, show that the minimization of lead release through orthophosphate treatment is a gradual and complicated process.³⁴

A comprehensive lead service line replacement plan is also necessary to safeguard public health and safety because "no chemical corrosion treatment system (including orthophosphate)" can ensure long-term safe service.³⁵ While lead release may be temporarily stabilized by chemical treatment, the protective scale inside of lead pipes can be damaged by changes in water chemistry, physical disturbances, or poor treatment decisions by the utility.³⁶ PWSA's own recent history offers an example of improper treatment decisions and their devastating impacts. PWSA's failure to maintain adequate corrosion control treatment and its 2014 decision to use caustic soda for corrosion control—without performing legally required analyses or obtaining necessary approvals—exacerbated elevated lead levels in customers' drinking water.³⁷

³¹ *Id.* at 58.

³² Pittsburgh UNITED St. C-2SUPP-R, at 9; Pittsburgh UNITED St. C-2SR, at 3-4; Pittsburgh UNITED St. C-2, at 16-17.

³³ Pittsburgh UNITED St. C-2, at 16-17; see also Pittsburgh UNITED St. C-3, at 34 ("As Mr. Welter explains and PWSA recognizes, the orthophosphate may not immediately result in declining lead levels and lead concentrations will vary for homes that still have lead service lines.").

³⁴ Pittsburgh UNITED St. C-2, at 16-17 & n.65.

³⁵ Pittsburgh UNITED St. C-2SR, at 4.

³⁶ Pittsburgh UNITED St. C-2, at 17.

³⁷ *Id.* at 9; see also I&E Main Br. at 69-70.

Washington, DC, and Flint, Michigan offer additional examples of utilities making serious errors in chemical treatment that resulted in lead contamination crises.³⁸

In short, orthophosphate treatment is not the “silver bullet” that PWSA wants it to be.³⁹ As long as lead service lines remain in PWSA’s infrastructure, its customers are at risk of lead exposure.

2. *The relief sought by Pittsburgh UNITED is timely*

Pittsburgh UNITED’s requested relief—including its recommendation that PWSA continue its neighborhood-based pipe replacement program—is not “premature.”⁴⁰ In the proposed partial settlement, PWSA committed to a goal of removing all known lead service lines in its system by 2026.⁴¹ But PWSA has offered no plausible plan to accomplish that goal. To meet its obligations and the Commission’s safe service standard, PWSA must maintain and accelerate—not scale back—its pipe replacement work, and it should do so through the expansion of its neighborhood-based program.

PWSA overstates the scope and efficacy of its existing programs to suggest that changes to its proposed programs are not needed now. For example, PWSA says that its current programs will remove all known residential lead service lines in PWSA’s system “eventually,” “over time.”⁴² But the Compliance Plan and LTIIP describe only one major program to remove lead service lines after 2020: the small-diameter water main replacement program.⁴³ That program will have replaced only 138 miles of water mains and associated lead service lines by 2026,

³⁸ Pittsburgh UNITED St. C-2, at 17.

³⁹ Pittsburgh UNITED St. C-2SUPP-R, at 9.

⁴⁰ *Contra* PWSA Main Br. at 76.

⁴¹ Joint Petition for Partial Settlement, Docket Nos. M-2018-2640802, -2640803, P-2018-3005037, -3005039, at 45-46, ¶ III.QQ.2 (filed Sept. 13, 2019).

⁴² PWSA Main Br. at 56-57, 61.

⁴³ *See* Pittsburgh UNITED Main Br. at 25.

leaving about 580 miles of mains and connected lead lines in the ground.⁴⁴ At PWSA’s proposed pace, it would “eventually” remove all lead service lines in PWSA’s system in nearly *thirty years*.⁴⁵ PWSA’s income-based reimbursement program will not meaningfully accelerate this slow pace of replacement given the considerable obstacles the income-based reimbursement program creates to customer participation.⁴⁶

PWSA’s suggestion that Pittsburgh UNITED’s concerns can be addressed in 2021, after it finalizes its inventory, is unavailing.⁴⁷ The proposed settlement establishes PWSA’s goal of replacing all lead lines by 2026 but allows the utility to revise that date if necessary.⁴⁸ If PWSA slows down its rate of replacement now, as it proposes to do, it might use that as an excuse to further delay the 2026 deadline.⁴⁹ Instead of maintaining or accelerating the pace of replacements to meet its 2026 goal, PWSA wants to terminate its neighborhood-based replacement program, which will result in a sharp *decrease* in the replacement rate.⁵⁰ The PUC should reject PWSA’s attempts to do so.

PWSA’s other reasons for refusing to continue its neighborhood-based replacement program are unpersuasive. PWSA offers no evidence to support its contention that the neighborhood-based program and small-diameter water main replacement program cannot work in tandem before 2024.⁵¹ In fact, Mr. Welter concluded that PWSA could coordinate the two

⁴⁴ Id.

⁴⁵ Pittsburgh UNITED St. C-2, at 26 & n.110.

⁴⁶ See Pittsburgh UNITED Main Br. at 28-36.

⁴⁷ PWSA Main Br. at 76-77.

⁴⁸ Joint Petition for Partial Settlement, Docket Nos. M-2018-2640802, -2640803, P-2018-3005037, -3005039, at 46, ¶ III.QQ.2.c (filed Sept. 13, 2019).

⁴⁹ See PWSA Main Br. at 57.

⁵⁰ The neighborhood-based program will replace about 4,400 public-side lead service lines in 2019 and 2020. PWSA St. C-1, at 56-57. In the two years after the neighborhood-based program is terminated, the small-diameter water main program will replace less than half that number. PWSA Hearing Ex. 1, App. C (LTIP), at 28 (projecting 2000 lead-service line replacements through the small-diameter water main program in 2021 and 2022).

⁵¹ PWSA Main Br. at 77 (quoting PWSA St. C-1RJ, at 17).

programs. He noted, “PWSA has experience with this approach. The small diameter water mains PWSA will replace in 2020 were carved out from areas covered by the 2019 neighborhood-based program.”⁵² Pittsburgh UNITED is also not the sole voice calling for additional action from PWSA on lead service line replacement, contrary to PWSA’s claim.⁵³ The Bureau of Investigation and Enforcement and the Office of Consumer Advocate join Pittsburgh UNITED in opposing PWSA’s income-based reimbursement program and recommending that PWSA instead provide customers with free lead service line replacements arranged by the utility.⁵⁴ Continuing the neighborhood-based program would accomplish that goal.

In short, a Commission order rejecting PWSA’s income-based reimbursement program and directing the continuation of its neighborhood-based program is necessary and timely. PWSA is asking the Commission to approve a long-term plan that cannot meet the utility’s 2026 goal and does not ensure safe service to its customers. The Commission should not permit PWSA to further delay the implementation of critically important health protections.

C. The Commission has jurisdiction over PWSA’s lead remediation plans

According to PWSA, the Commission has no jurisdiction to review its lead remediation plans. This is untrue. Lead contamination and remediation are issues of water service well within the Commission’s authority, and that authority extends to both public- and private-side service

⁵² Pittsburgh UNITED St. C-2, at 28; see also PWSA St. C-1, at 63. Despite the fact that Mr. Welter discussed these findings in his direct testimony, PWSA did not attempt to counter them in its rebuttal, supplemental direct, or supplemental rebuttal testimony. Only in Mr. Weimar’s rejoinder testimony, after Pittsburgh UNITED could no longer offer written expert testimony, did PWSA address this issue. See PWSA St. C-1RJ, at 16-17.

⁵³ PWSA Main Br. at 75.

⁵⁴ I&E Main Br. at 83-95; OCA Main Br. at 25, 28.

lines. The state legislature assigned the Commission a critical role in evaluating PWSA's lead remediation plans.

1. *Lead contamination is a water service issue*

Contrary to PWSA's assertions, lead contamination and remediation are matters of "water service," not just "water quality."⁵⁵ The lead in PWSA's water comes from the corroding pipes PWSA uses to convey water to customers' taps.⁵⁶ The disrepair of its distribution infrastructure is a matter of water service that falls squarely under the Commission's jurisdiction.⁵⁷ Because lead contamination implicates both water service and quality, the Commission exercises "joint jurisdiction" with DEP over lead contamination and remediation.⁵⁸

PWSA mistakenly relies upon Rovin and Pickford to argue that DEP's jurisdiction over lead contamination and remediation is exclusive.⁵⁹ Those cases are not on point. Rovin and Pickford rejected efforts by customers to force the Commission to regulate "substances used in the treatment of the water," even though state and federal law task DEP with evaluating the safety of water treatment chemicals.⁶⁰ For instance, in Pickford, DEP had already decided that adding chloramines to drinking water presented no safety risks and issued a permit to the utility to use the chemical. The customer could not mount "a collateral attack on the DEP permitting process" by petitioning the Commission "to re-litigate and second guess the DEP's determinations regarding water quality."⁶¹

⁵⁵ PWSA Main Br. at 66.

⁵⁶ Pittsburgh UNITED St. C-2, at 6. As Pittsburgh UNITED expert Dr. Lanphear testified, "Living in a home that has a lead service line is an independent risk factor for elevated blood lead levels (≥ 5 $\mu\text{g/dL}$), even when the lead level for the broader water system is below EPA's lead action level." Pittsburgh UNITED St. C-3SUPP-R, at 4-5.

⁵⁷ See 66 Pa. C.S. §§ 3205(a), 1501.

⁵⁸ See Pickford v. Pa. Am. Water Co., Docket Nos. C-20078029 et al., at 16 (Opinion and Order entered Mar. 20, 2008); Pittsburgh UNITED Main Br. at 20-21.

⁵⁹ PWSA Main Br. at 67-68.

⁶⁰ Pickford v. PUC, 4 A.3d 707, 714 (Pa. Commw. Ct. 2010); see also Rovin v. PUC, 502 A.2d 785, 785-86 (Pa. Commw. Ct. 1986).

⁶¹ Pickford, 4 A.3d at 714.

Unlike the customers in Rovin and Pickford, Pittsburgh UNITED, the Bureau of Investigation and Enforcement, and the Office of Consumer Advocate are not asking the Commission to invalidate a DEP permit or second guess a DEP decision about water treatment. They oppose PWSA's income-based reimbursement program, which DEP has neither reviewed nor approved.

Nor does Pittsburgh UNITED challenge any action by PWSA that DEP has determined will protect public health. DEP's Consent Order does not purport to ensure the safety of PWSA's service. In fact, many of its terms are insufficient to address risks to customers from lead contamination. The Consent Order allows PWSA to conduct partial lead service line replacements, despite broad recognition that such replacements threaten public health.⁶² And even though the lead action level is not a health-based standard,⁶³ PWSA's lead service line replacement obligations under the Consent Order cease altogether once PWSA's tap water lead concentrations fall below the action level in two consecutive monitoring periods.⁶⁴ Compliance with the Consent Order is not dispositive of whether PWSA meets the Commission's standard for furnishing safe service to its customers.⁶⁵

Moreover, a Commission order directing PWSA to take additional steps—beyond those in the Consent Order—would not “potentially subject PWSA to inconsistent directives and obligations.”⁶⁶ PWSA has not identified a single conflict—or even potential conflict—between Pittsburgh UNITED's requested relief and the Consent Order. Indeed, a Commission order requiring PWSA to develop a plan for free, utility-initiated lead service line replacements would

⁶² Pittsburgh UNITED St. C-2, Appendix C, 9-11, DEP Consent Order ¶ 3.a; Pittsburgh UNITED C-3, at 19-21.

⁶³ Pittsburgh UNITED St. C-3, at 9.

⁶⁴ Pittsburgh UNITED St. C-2, Appendix C, 14-15, DEP Consent Order ¶ 3.e.ii.

⁶⁵ Pittsburgh UNITED St. C-3SR, at 3-4.

⁶⁶ PWSA Main Br. at 69.

be fully consistent with the Consent Order. The Consent Order even notes that PWSA intends to develop a plan to conduct lead service line replacements after its water meets the lead action level during two consecutive six-month monitoring periods.⁶⁷ Commission review of that plan is necessary and appropriate.

Act 65 and 66 Pa. C.S. § 1501 vest the Commission with jurisdiction to review the lead remediation plans in PWSA's Compliance Plan and LTIP, to determine whether those plans ensure safe service for all PWSA customers, and to direct PWSA to correct any deficiencies.⁶⁸ The Commission properly recognized its jurisdiction over PWSA's lead remediation plans in the Final Implementation Order.⁶⁹ It should reject PWSA's attempt to escape the Commission review of those plans mandated by state law.

2. *The Commission has jurisdiction over PWSA's plans for private-side lead service line replacements*

PWSA incorrectly claims that "the Commission clearly lacks jurisdiction to order PWSA to replace *customer-owned* lead lines."⁷⁰ Section 1501 of the Public Utility Code obligates PWSA to provide customers with safe and reasonable water service.⁷¹ Section 3205, enacted in part to address PWSA's lead crisis,⁷² authorizes the Commission to require PWSA to "replace facilities and equipment used to provide services under this chapter to ensure that the equipment and facilities comply with section 1501."⁷³ Private-side service lines are facilities used by PWSA

⁶⁷ Pittsburgh UNITED St. C-2, Appendix C 8-9, DEP Consent Order ¶ Y.

⁶⁸ 66 Pa. C.S. §§ 3204(c), 1501.

⁶⁹ Implementation of Ch. 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority, Final Implementation Order, Docket Nos. M-2018-2640802, -2640803, at 32, 45 (order entered Mar. 15, 2018).

⁷⁰ PWSA Main Br. at 69 (emphasis in original).

⁷¹ 66 Pa. C.S. § 1501.

⁷² House Co-Sponsorship Memoranda for HB 1490, PA House of Representatives Session 2017-18, Regular Session, May 24, 2017, available at <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20170&cosponId=23989>.

⁷³ 66 Pa. C.S. § 3205.

to provide water service.⁷⁴ Consequently, when necessary to ensure safe service, the Commission can order PWSA to replace private-side service lines.

The only case PWSA cites on this issue contradicts its argument.⁷⁵ Although Public Utility Commission v. Mercer Gas approved a utility's tariff supplement assigning to customers responsibility for service lines they own, it also held that the Commission "is not prohibited under existing law and regulation from requiring Mercer Gas Company to assume ownership, installation, maintenance, and replacement of customer service lines, should [the Commission] hereafter determine that it would be in the interest of the public to do so."⁷⁶ Mercer Gas stands for the proposition that the Commission may direct PWSA to replace customer-owned service lines.

PWSA also notes that neither its tariff nor 66 Pa. C.S. § 1311(b)(2) require PWSA to replace private-side lead service lines.⁷⁷ While the tariff and statute may not explicitly require private-side service line replacement, these provisions do not preclude it, nor do they excuse PWSA of its obligation under § 1501 to provide safe service. The interpretation PWSA advances of its tariff—that it exempts PWSA from any legal obligation to replace private-side lead service lines—would be inconsistent with the Commission-approved settlement of the rate case and the proposed partial settlement in this case; both legally obligate PWSA to replace certain private-side lead service lines.⁷⁸ In addition, § 1311(b)(2) specifies the cost-recovery mechanism

⁷⁴ The Public Utility Code defines "facilities" as including "any and all means and instrumentalities in any manner *owned*, operated, leased, licensed, *used*, controlled, furnished, *or* supplied for, by, or in connection with, the business of any public utility." 66 Pa. C.S. § 102 (emphases added). The definition's use of the disjunctive "or" indicates that an "instrumentality," such as a service line, can be a "facility" even if it is not "owned" by the utility, so long as it is "used" to provide service.

⁷⁵ PWSA Main Br. at 70 n.294.

⁷⁶ Docket No. R-80091297, at *34 (Opinion and Order entered Aug. 21, 1981).

⁷⁷ PWSA Main Br. at 70-72.

⁷⁸ Compare PWSA Main Br. at 69-70 with Recommended Decision, Docket Nos. R-2018-3002645, -3002647, at 17, § III.C.1.d.iii (order entered Jan. 17, 2019), and Joint Petition for Partial Settlement, Docket Nos. M-2018-2640802, -2640803, P-2018-3005037, -3005039, at 49, ¶ III.VV.1.a (filed Sept. 13, 2019).

available to utilities that replace private-side lead service lines through a Commission-approved program. The statute *confirms* the Commission's jurisdiction to review lead service line replacement programs, including the one at issue in this case.

PWSA's attempt to avoid responsibility for private-side lead service lines is particularly troubling given that the utility itself exacerbated the risk those pipes present to customer safety by failing to maintain optimal corrosion control and illegally switching treatment chemicals.⁷⁹ In addition, thousands of residences have private-side-only lead service lines because the utility at some point performed a dangerous partial replacement.⁸⁰ PWSA has disclaimed ownership of private-side service lines,⁸¹ but it cannot escape its obligation to provide safe service.

The evidence shows that replacing private-side lead service lines is necessary to ensure safe service to PWSA's customers. Customers have a right to water fit for basic domestic purposes, such as drinking and cooking.⁸² Private-side lead service lines leach a toxic substance that renders water unsafe for drinking or cooking.⁸³ Replacing those lines is the only way to eliminate that risk to customers.⁸⁴ Therefore, PWSA cannot meet its obligation to provide safe service by replacing only public-side lead service lines.

The Public Utility Code gives the Commission the authority to order the relief requested in this proceeding: rejecting the income-based reimbursement program and directing PWSA to provide free, utility-initiated replacements of public- and private-side lead service lines.

⁷⁹ I&E Main Br. at 69-70.

⁸⁰ Pittsburgh UNITED St. C-2SUPP-R, at 5, 8.

⁸¹ Pittsburgh UNITED St. C-2, at 18.

⁸² PUC v. Pa. Gas & Water Co., Docket Nos. R-850178 et al. (Opinion and Order entered April 24, 1986).

⁸³ Pittsburgh UNITED St. C-2, at 18; Pittsburgh UNITED St. C-3, at 21.

⁸⁴ Pittsburgh UNITED St. C-2, at 16-18; Pittsburgh UNITED St. C-3, at 21-22.

D. Revisions to PWSA's lead remediation plans should be addressed through an on-the-record proceeding

If the Commission orders PWSA to submit a new Compliance Plan or LTIIP, any revised lead remediation plans should include details on the design and implementation of the proposed lead service line replacement program or programs, customer eligibility and enrollment criteria, and administrative and program budgets.⁸⁵ The Commission should reject PWSA's request that the Commission approve the income-based reimbursement program through a tariff revision, which it proposed to file as a compliance filing to this Compliance Plan proceeding.⁸⁶ A compliance filing will not provide adequate opportunity for review and comment and is not an appropriate vehicle for PWSA to seek approval of such an important and administratively complex initiative. Indeed, PWSA did not propose this tariff revision until briefing, and it was never subject to review and scrutiny by the parties through the course of this proceeding. Any revisions to PWSA's lead remediation plans should be subject to public comment and review by the Commission in an on-the-record proceeding.

III. CONCLUSION

For the reasons above, Pittsburgh UNITED requests that the Commission reject PWSA's proposed income-based reimbursement program. It should order the utility to revise its Compliance Plan and LTIIP to offer free, utility-initiated lead service line replacements to all customers by continuing the neighborhood-based program beyond 2020.

⁸⁵ Pittsburgh UNITED St. C-1SUPP-R, at 16-17.

⁸⁶ See PWSA Main Br. at 71 n.297.

Respectfully Submitted,



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Dated: September 30, 2019