

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the Public	:	M-2018-2640802
Utility Code Regarding Pittsburgh Water and	:	M-2018-2640803
Sewer Authority – Stage 1	:	

Petition of The Pittsburgh Water and Sewer	:	P-2018-3005037
Authority for Approval of Its Long-Term	:	P-2018-3005039
Infrastructure Improvement Plan	:	

**RECOMMENDED DECISION**

Before  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge

Conrad A. Johnson  
Administrative Law Judge

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## I. INTRODUCTION

This Recommended Decision recommends approval without modification of the Joint Petition for Partial Settlement executed by the parties<sup>1</sup> and filed with the Commission's Secretary on September 13, 2019 because it is in the public interest. In addition, it is recommended that the 1995 Cooperation Agreement be terminated, and business transactions conducted with the City of Pittsburgh occur on a transactional basis until a new cooperation agreement is filed and approved by the Commission. It is further recommended that the Compliance Plan be revised to require the Pittsburgh Water and Sewer Authority (PWSA or Authority) to become responsible for the cost of all meter installation in accordance with 52 Pa.Code § 65.7; to require PWSA to introduce a flat rate, at minimum the customer charge for the customer's class, for all unbilled customers in its next base rate case, and, as customers are metered, to immediately bill full usage; and to require PWSA to comply with 52 Pa.Code §§ 65.21-65.23 regarding a utility's duty to make line extensions, and revise its tariff and operations accordingly.

Additionally, this decision recommends that the Commission approve without modification PWSA's residential Lead Service Line Replacement Program (LSLR), which was revised over the course of the litigation and to which PWSA has committed to continue to evaluate to meet the Authority's target date of replacing all residential service lines in its system by 2026; and therefore, PWSA's LSLR Program is in the public interest. This decision further recommends the Commission dismiss the request of the Office of the Small Business Advocate to order PWSA to include non-residential lead service lines as part of the PWSA's LSLR Program because the Commission lacks the power to order a utility to replace privately-owned service lines. Concerning PWSA's residency policy which generally requires employees of the Authority to reside in the City of Pittsburgh, this decision recommends that Commission approval is not required, because essentially PWSA's residency policy is a discretionary business decision; and therefore, the policy is beyond the power of the Commission to affect or supersede.

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<sup>1</sup> The Pittsburgh Water and Sewer Authority (PWSA or the Authority), the Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Pittsburgh UNITED (UNITED), and Pennsylvania-American Water Company (PAWC).

## II. HISTORY OF THE PROCEEDING

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 of the Public Utility Code.

Comments in response to the TIO were submitted by Pittsburgh Water and Sewer Authority (PWSA), the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Pennsylvania-American Water Company (PAWC) and Pittsburgh UNITED. Comments in response to the TIO were also submitted by Michelle Naccarati-Chapkis on behalf of the Mayor's Blue Ribbon Panel on Restructuring PWSA (Blue Ribbon Panel) and by the following individuals: Dan Scheid, Alicia Salvadeo, Laura Horowitz, Carlyn Van Dyke, Mark Dixon, Mark Rafanan, Maureen Copeland and Krystie Knight.

On March 15, 2018, the Commission issued a Final Implementation Order (FIO) in Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater) laying out a process for implementation of Chapter 32, including tariff approval, ratemaking, compliance plan, and assessment provisions.

PWSA's water and wastewater operations became subject to regulation of the Commission on April 1, 2018, pursuant to Chapter 32.<sup>2</sup> PWSA's currently approved water tariff became effective on March 1, 2019. PWSA's currently approved wastewater tariff also became effective on March 1, 2019.

On September 26, 2018, the Commission issued a Secretarial Letter (September Secretarial Letter). The Secretarial Letter explained, 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. The Commission further established a comment period of 20 days from the date of publication in the *Pennsylvania Bulletin*.

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<sup>2</sup> 66 Pa.C.S. § 3202(a)(1); FIO, pp. 6-8.

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 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.

On September 28, 2018,<sup>3</sup> PWSA filed: (a) its Compliance Plan (Compliance Plan or CP) at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater); and (b) its Long Term Infrastructure Improvement Plan (LTIIIP), which was docketed at Docket Nos. P-2018-3005037 (water) and P-2018-3005039 (wastewater). These proceedings were subsequently consolidated, upon motion by PWSA,<sup>4</sup> by Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Conrad A. Johnson (collectively, the undersigned ALJs).<sup>5</sup>

On October 18, 2018, OCA filed an Answer, Notice of Intervention, and Public Statement. OCA further submitted comments regarding the LTIIIP on October 25, 2018 and comments identifying preliminary issues in PWSA's Compliance Plan on November 2, 2018. On October 18, 2018, OSBA filed an Answer and Notice of Intervention.<sup>6</sup> On October 22, 2018, I&E entered its appearance.<sup>7</sup> I&E further submitted comments regarding the LTIIIP on October 25, 2018.

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<sup>3</sup> The Commission's established a due date of September 28, 2018, for the filing by PWSA of a Compliance Plan and a LTIIIP. See *Implementation of Chapter 32 of the Public Utility Code*, Docket Nos. M 2018-2640802 (water) and M-2018-2640803 (wastewater), Final Implementation Order entered Mar. 15, 2018 (FIO).

<sup>4</sup> On December 14, 2018, PWSA filed a motion to consolidate PWSA's Compliance Plan and LTIIIP. This was done pursuant to the Joint Petition for Settlement (Rate Settlement) in PWSA's July 2, 2018 base rate increase filing at Docket Nos. R-2018-3002645 (Water) and R-2018-3002647 (Wastewater) wherein PWSA, I&E, OCA, OSBA and Pittsburgh UNITED agreed that, within 30 days of the signature date of the Settlement, PWSA would file a motion with the Commission to consolidate PWSA's Compliance Plan and LTIIIP. As part of the Rate Settlement in the rate proceeding, PWSA further agreed (a) to file revisions to the Compliance Plan and/or LTIIIP and (b) that certain issues would be investigated as part of this proceeding. In that proceeding, PAWC and Duquesne Light Company indicated that they did not oppose the Rate Settlement.

<sup>5</sup> First Interim Order Granting Motion for Consolidation of Proceedings (dated February 21, 2019). On February 5, 2019, the undersigned ALJs were assigned the LTIIIP proceeding. *Id.*

<sup>6</sup> OSBA filed an additional Notice of Appearance on November 14, 2018.

<sup>7</sup> I&E filed a corrected Notice of Appearance on November 28, 2018

Petitions to Intervene were filed by PAWC and Pittsburgh UNITED<sup>8</sup> on October 30, 2018 and November 1, 2018, respectively. Pittsburgh UNITED further submitted comments regarding the LTIIP on October 25, 2018 and comments in response to the Compliance Plan on November 1, 2018.

On November 28, 2018, the Commission issued a Corrected Secretarial Letter (November Secretarial Letter) and the accompanying Technical Staff Initial Report and Directed Questions<sup>9</sup> – Stage 1 (Stage 1 Initial Report), which lists a variety of specific questions that PWSA and the parties were directed to address as part of the Stage 1 litigation.<sup>10</sup>

The November Secretarial Letter assigned PWSA's Compliance Plan to the OALJ for hearings as contemplated in the September Secretarial Letter, and also established a two-stage review process for PWSA's Compliance Plan.<sup>11</sup>

On December 5, 2018, a Call-In Prehearing Conference Notice was issued scheduling a call-in prehearing conference for December 20, 2018 at 10:00 a.m. On December 7, 2018, a Prehearing Conference Order was issued.

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<sup>8</sup> Pittsburgh United is represented through counsel at the Pennsylvania Utility Law Project (PULP), and the National Resources Defense Council (NRDC). Neither PULP nor NRDC are independent parties of record. On January 16, 2019, Pittsburgh UNITED filed two motions for admission *pro hac vice* for counsel from NRDC. That Motion was granted on February 11, 2019.

<sup>9</sup> **PWSA Exh. RAW/C-1 reprinted the Commission's questions and sequentially numbers them. The Settlement refers to Directed Questions by the numbering shown in PWSA Exh. RAW/C-1.**

<sup>10</sup> The OALJ was directed to incorporate the Stage 1 Initial Report into its Prehearing Order and to conduct evidentiary hearings to address matters raised therein. November Secretarial Letter, p. 4.

<sup>11</sup> On December 11, 2018, Pittsburgh UNITED filed a Petition for Reconsideration and/or Clarification of the November 28, 2018 Secretarial Letter. On December 11, 2018, OCA filed a Petition for Reconsideration and/or Clarification of the November 28, 2018 Secretarial Letter. On December 18, 2018, PWSA filed an Answer to the Petitions of Pittsburgh UNITED and OCA. On December 20, 2018, a Reconsideration Order was entered wherein the Commission declined to reconsider its directive that a two-stage review be utilized for its review of PWSA's Compliance Plan. However, the Commission granted Pittsburgh UNITED's request for clarification of the issues related to PWSA's compliance with Chapter 15, subchapter B of the Public Utility Code, known as the Discontinuance of Service to Leased Premises Act (DSLPA), and directed that DSLPA issues be addressed as part of the Stage 1 Compliance Plan proceeding. The parties have since agreed, after further review and litigation of DSLPA-related issues, that PWSA's compliance with DSLPA should be addressed as part of Stage 2 because the issues are inextricably linked to PWSA's broader compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations – issues which were explicitly reserved by the Commission for the Stage 2 proceeding.



Prehearing Memoranda were filed by PWSA, I&E, OCA, OSBA, Pittsburgh UNITED and PAWC.

A prehearing conference was held on Thursday, December 20, 2018, as scheduled. Counsel for PWSA, I&E, OCA, OSBA, Pittsburgh UNITED and PAWC attended the conference. Also, Michelle Naccarati-Chapkis attended the conference.

On December 27, 2018, the undersigned ALJs issued a Prehearing Order memorializing the litigation schedule and other matters addressed by the parties attending the prehearing conference. The Prehearing Order granted the Petitions to Intervene of PAWC and Pittsburgh UNITED.

On January 22, 2019, PWSA filed a Motion for a Protective Order. The requested Protective Order was granted on March 12, 2019.

On February 1, 2019, PWSA filed and served revisions to the Compliance Plan (Compliance Plan Supplement).

On February 14, 2019, PWSA served its written direct testimony and exhibits.

On March 4, 2019, I&E filed an Expedited Motion to Challenge PWSA's Designation of Certain Information as Proprietary and Confidential (Motion) pertaining to negotiation of a new Cooperation Agreement between PWSA and the City of Pittsburgh (City). The Motion requested an order requiring PWSA to remove the proprietary and confidential designation of the following materials served on February 14, 2019: (1) Page 10 of PWSA Statement No. 2-C (the Direct Testimony of Debbie M. Lestitian); (2) Confidential Exhibit DML/C-1; and (3) Confidential Exhibit DML/C-2. PWSA filed a response opposing the Motion on March 8, 2019.

A Third Interim Order dated March 29, 2019 was entered holding the issue in abeyance until May 1, 2019 and directing PWSA to file (by April 30, 2019) a status report

addressing the expected date for completion of the negotiations for a new Cooperation Agreement.<sup>12</sup>

On April 5, 2019, I&E, OCA, OSBA, Pittsburgh UNITED, and PAWC served their written direct testimony and accompanying exhibits. On May 6, 2019, PWSA, OCA, OSBA, and PAWC served their written rebuttal testimony and accompanying exhibits.

On May 13, 2019, the parties requested a three-month extension in the Commission-established schedule for resolution of the above-captioned proceeding to permit settlement discussions to attempt to resolve all the issues raised in the proceeding. They also requested that the following consumer-related issues be moved from Stage 1 to Stage 2 of the proceedings so that they might discuss the issues in workshops led by the Commission's Bureau of Consumer Services (BCS): (1) residential service termination and collections issues, and (2) issues related to PWSA's compliance with the Discontinuance of Service to Leased Premises Act. Those requests were granted by Secretarial Letter on May 15, 2019 (May Secretarial Letter), and the evidentiary hearings scheduled for May 22-24 were cancelled.

On May 17, 2019, I&E, OCA, OSBA and Pittsburgh UNITED served their written surrebuttal testimony and accompanying exhibits.

A Prehearing Conference was held on June 7, 2019 and, pursuant to the Fourth Interim Order Amending the Litigation Schedule dated June 18, 2019, the litigation schedule was amended to accommodate the three-month extension granted by the Commission. The litigation schedule also recognized that the parties would be using the time to discuss settlement and incorporated various dates for which the parties were required to serve the undersigned ALJs with settlement updates.

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<sup>12</sup> At the hearing on August 21, 2019 and because the negotiations between PWSA and the City of Pittsburgh regarding a new Cooperation Agreement had concluded, PWSA removed the confidential designations identified by the Motion on the version of PWSA St. No. 2-C that was ultimately moved into the record. As such, I&E agreed that its Motion was moot.

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 OSBA's written supplemental direct testimony of August 2, 2019. On August 14, 2019, I&E, OCA, OSBA and Pittsburgh UNITED served their written supplemental rebuttal testimony and accompanying exhibits. On August 19, 2019, PWSA served written rejoinder testimony in response to I&E's, OCA's, OSBA's and Pittsburgh UNITED's written supplemental rebuttal testimony of August 14, 2019.

The 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, the following hearing exhibits on behalf of PWSA were admitted into the record, with the noted exception of PWSA Hearing Exhibit 6:

PWSA Hearing Exh. 1	PWSA Petition for Approval of Its Compliance Plan as filed September 28, 2018 (Appendix C is PWSA's Long Term Infrastructure Improvement Plan as filed September 28, 2018)
PWSA Hearing Exh. 2	PWSA Compliance Plan Supplement as filed February 1, 2019
PWSA Hearing Exh. 3	PWSA Long Term Infrastructure Improvement Plan dated August 21, 2019
PWSA Hearing Exh. 4	List of PWSA Written Testimony, including exhibits, and witness verifications
PWSA Hearing Exh. 5	Joint Stipulation PWSA and UNITED Re: Lead Replacement Reimbursements
PWSA Hearing Exh. 6	<i>DEP Consent Order and Agreement</i> Referenced in PWSA St. No. C-1SD at 9-11 (when available)

PWSA Hearing Exhibit 6 was not yet available at the time of the hearing but, per the agreement of the parties, the undersigned ALJs ordered PWSA to serve the Pennsylvania Department of Environmental Protection (PA DEP or DEP) Consent Order and Agreement as soon as it became available on all the parties. The DEP Consent Order and Agreement was finalized on September 6, 2019 and filed by PWSA on September 9, 2019. Pursuant to the direction of the undersigned ALJs during the hearing, a three-day time period for the filing of any objections to the admission of PWSA Hearing Exhibit No. 6 was established. No objections were filed.

On September 13, 2019, a Joint Petition for Partial Settlement (Joint Petition or Partial Settlement) executed by PWSA, I&E, OCA, OSBA, Pittsburgh UNITED and PAWC (Joint Petitioners) was filed.

On September 19, 2019, main briefs were filed by PWSA, I&E, OCA, OSBA, and Pittsburgh UNITED.

On September 30, 2019, statements in support of the Partial Settlement were filed by PWSA, I&E, OCA, OSBA and Pittsburgh UNITED. Reply briefs were also filed by these same parties.

On October 7, 2019, an interim order was issued admitting PWSA Hearing Exhibit 6 and closing the record.

### **III. FINDINGS OF FACT**

1. PWSA was established as a municipal authority by the City of Pittsburgh in 1984. (PWSA Compliance Plan, p. 14).

2. House Bill 1490 culminated in Act 65, which was signed into law by Governor Tom Wolf on December 21, 2017. 66 Pa.C.S. § 3201.

3. In accordance with Act 65, the Public Utility Code was amended to grant the Commission jurisdiction over the provision of utility water, wastewater, and stormwater service by entities created by Pennsylvania cities of the second class under the Municipality Authorities Act. 66 Pa.C.S. § 3201.

4. The Commission's jurisdiction over PWSA became effective on April 1, 2018. 66 Pa.C.S. § 3202(a)(1).

5. In its Final Implementation Order for Chapter 32 of the Code regarding PWSA, the Commission established affirmative expectations and instructions for PWSA's

compliance with the Code and Commission regulations. *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, M-2018-264802 et al, Final Implementation Order (entered on March 15, 2018).

### **The Cooperation Agreement between PWSA and the City of Pittsburgh**

6. PWSA originally served as a financing authority; however, pursuant to the Cooperation Agreement between PWSA and the City of Pittsburgh, effective January 1, 1995, PWSA assumed responsibility from the City for day-to-day operations of Pittsburgh's water and wastewater systems. (PWSA Compliance Plan, p. 14).

7. Pursuant to the 1995 Cooperation Agreement, PWSA and the City are to provide various services to each other. PWSA is to pay for City services provided under the 1995 Cooperation Agreement and PWSA is to provide the City 600 million gallons of water each year at no cost. (PWSA Compliance Plan, Appendix B, 1995 Cooperation Agreement, VII.C. & VII.D).

8. PWSA pays the City an annual fee of \$7.15 million for a variety of services and costs, but there is no detailed invoice for the fee. (PWSA Compliance Plan, p. 105; I&E St. No. 2, p. 16.).

9. PWSA witness Debbie M. Lestitian identified approximately \$20 million in services that PWSA provides to the City, and \$13 million in services that the City provides to PWSA. PWSA St. No. C-2, p. 10 and Exhibits DML/C-1 and DML/C-2.

10. PWSA's Board extended the date for termination of the 1995 Cooperation Agreement until October 3, 2019. PWSA St. No. 2-CSD, p. 3.

### **Municipal Properties and Public Fire Hydrants within the City**

11. The rebuttal testimony of PWSA witness Robert A. Weimar introduced the assertion that PWSA has an agreement with the City to split the costs of meter installations 50/50. PWSA St. No. C-1R, p. 18.

12. PWSA recognizes the provision of unmetered, unbilled service violates the Public Utility Code and Commission regulations. PWSA Compliance Plan, p. 109.

13. PWSA proposes, once municipal properties are metered, to charge 20% of the total bill in the first year for the metered property, and for each successive year to charge an additional 20% of the total bill for the metered property, until, by year 5, 100% of the total bill for the metered property is charged. PWSA Compliance Plan, p. 110.

14. Half of the City's major facilities are metered, and measurements for those facilities equate to about \$3.6 million in billed usage. PWSA St. No. C-1, p. 28.

15. City and City-affiliated facilities that do not have meters include the Pittsburgh Zoo, swimming pools and spray parks. PWSA St. No. C-1, p. 28.

16. 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), p. 26.

17. 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, pp. 109-111; Partial Settlement at III.G.1; PWSA Exh. RAW/C-37.

18. PWSA's unbilled usage represents upwards of \$11.4 million in foregone revenue. I&E St. No. 3, p. 55.

19. 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, p. 26; Partial Settlement, Section III.G.1-2, p. 18.

20. 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, pp. 28-29.

21. 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 (Weimar), p. 23.

22. 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 (Weimar), p. 31.

### **Applicability of the Municipal Authority's Act**

23. PWSA cannot be in compliance with the Municipality Authorities Act and Commission regulations regarding line extensions at the same time. PWSA St. No. C-4, p. 33.

24. The current version of the Municipal Authority's Act regarding line extensions was enacted on July 7, 2017, when Governor Wolf signed Act 19 of 2017 into law. Chapter 32 of the Code was enacted on December 21, 2017, when Governor Wolf signed Act 65 of 2017 into law.

### **Residency Requirement**

25. Similar to 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), p. 14.

26. 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), pp. 36-41.

27. Imposition of a residency requirement is a prerogative of a utility's board of directors.

### **Lead Remediation Issues**

28. 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), p. 119.

29. Lead can enter drinking water through lead services lines that serve individual customers. PWSA Hearing Exh 1, Appendix 1 (Compliance Plan), p. 119.

30. A residential service line includes a "public" portion owned by PWSA and a "private" portion owned by the property owner.

31. In 2018, PWSA estimated that there were about 12,300 residential public lead service lines within PWSA's water system. PWSA Hearing Exh. 3 (LTIIP), p. 28.



32. PWSA is working to update/complete its inventory of residential lead service lines by December 31, 2020. PWSA St. C-1R (Weimar), pp. 60-61; PWSA C-1SD (Weimar), p. 24; PWSA Exh. RAW/C-44; PWSA St. No. C-1R-Supp. (Weimar), pp. 2, 5-6; PWSA St. No. C-1RJ (Weimar), pp. 4, 16-17.

33. PWSA projects that the number of residential customers potentially with public lead service lines (after 2020) will 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), Table 2-7; UNITED St. C-1SUPP-R (Miller), p 5, Appendix A, 1.

34. 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), pp. 60-61; PWSA C-1SD (Weimar), p. 24; PWSA Exh. RAW/C-44; PWSA St. No. C-1R-Supp. (Weimar), pp. 2, 5-6; PWSA St. No. C-1RJ (Weimar), pp. 4, 16-17.

35. PWSA plans to inventory all non-residential line connections and identify those that contain lead by December 31, 2022, to comply with the November 17, 2017 Consent Order and Agreement (COA) with PADEP. PWSA St. No. C-1R, p. 61.

### **Corrective Measures**

36. 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, p. 17.

### **Corrosion Control**

37. PWSA started corrosion control (using orthophosphate), once it obtained the required approvals from the PADEP. PWSA Hearing Exh. 3 (LTIIP), § 8.2; Partial Settlement, § III.M.2.c, III.XX; PWSA St. C-1RJ (Weimar), pp. 17-18; PWSA St. C-1R-Supp (Weimar), p. 7; PWSA St. C-1SD (Weimar), p. 22-23; PWSA St. C-1R (Weimar), pp. 2-3, 37-

38; PWSA St. C-1 (Weimar), pp. 48-49.

38. PWSA anticipates that orthophosphate will very shortly reduce lead levels in residential tap water to well below PADEP actions levels. *See* Partial Settlement, § III.M.2.c, III.XX; PWSA St. C-1RJ (Weimar), pp. 17-18; PWSA St. C-1R-Supp (Weimar), p. 7; PWSA St. C-1SD (Weimar), pp. 22-23; PWSA St. C-1R (Weimar), pp. 2-3, 37-38; PWSA St. C-1 (Weimar), pp. 48-49.

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

39. PWSA has been engaged in public education, and has been replacing lead service lines owned by PWSA. PWSA Hearing Exh. 3 (LTIP), § 2.2, 2.2.1, 2.2.2; PWSA Exh. RAW/C-46 (July 2019 Policy).

40. Under other programs established by PWSA, 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), 2018 Lead Line Replacement Program; PWSA St. No. C-1, pp. 54-55.

41. PWSA has 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), § 8.2.

42. 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), pp.51, 54; PWSA Exh. RAW/C-23.

43. In PWSA's LTIP the projected current and "accelerated" small diameter water main replacement program (SDWMR) costs are listed as follow:

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

<b>Year</b>	<b>Existing Budgeted SDWMR Program*</b>	<b>Accelerated SDWMR Program</b>
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.

PWSA Hearing Exh. 3 (LTIP), p. 29.

### **2017 Lead COA**

44. In November 2017, PWSA entered into a Consent Order and Agreement (Lead COA) with the PADEP to resolve regulatory issues related to lead service line replacements, corrosion control treatment and other related matters. UNITED St. 4 (Welter), Appendix D.

45. The Lead COA lays out actions for PWSA's compliance with the "Lead Action Level" under PADEP's "Lead and Copper" Regulations. *Id.*

46. The Lead COA also requires implementation of a corrosion control program. Lead COA, § 3.b. It also contains deadlines for completing a lead service line system inventory and performing lead service line replacements. Lead COA, § 3.c.; Lead COA, §§ 3.d, 3.e.

47. Under the lead COA, 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,"<sup>13</sup> 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), p. 2; Lead COA, p. §§ 3.e, 3.g.

48. 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.

49. PWSA has 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.

50. 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).

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<sup>13</sup> "Action Level" for lead as defined by 25 Pa.Code § 109.1102(a).

51. PWSA's July 2019 Policy was formulated to address all known residential lead service lines in PWSA's system. PWSA St. C-1RJ (Weimar), p. 4.

52. PWSA has 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). PWSA St. C-1RJ, p.15.

53. PWSA 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, § III.QQ.2.a.

54. PWSA 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, § III.QQ.3; Partial Settlement, § III.VV.2.a.

55. 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), pp. 9-10.

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

56. 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 receive a \$1,000 stipend to help defray the costs of a private-side lead line replacement.

57. PWSA's income-based reimbursement plan is similar to the private service replacement programs implemented by other utilities.

58. 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.

59. PWSA is also willing to work with the Community Lead Response Advisory Committee (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), pp. 11-12.

### **Partial Settlement**

60. 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, § III.QQ.3; Partial Settlement, § III.RR; Partial Settlement, § III.TT.1, III.TT.3; Partial Settlement, § III.TT, III.UU.

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

61. Lead service lines were not historically 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), pp. 51-52.

62. There are a small number of private side galvanized iron lines connected to non-residential locations. PWSA St. C-1R-Supp (Weimar), pp. 3-5; PWSA St. C-1RJ (Weimar), pp. 10-11.

63. 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), p. 4.

#### **IV. TERMS AND CONDITIONS OF PARTIAL SETTLEMENT**

As set forth on Exhibit 1 attached to the Joint Petition for Partial Settlement, Joint Petitioners identified a total of 186 discrete issues involved in this proceeding. Of these 186 issues, Joint Petitioners were able to reach agreement regarding 139 issues (nearly 75% of all identified issues).<sup>14</sup> Joint Petitioners propose to defer another 25 issues to future proceedings (including those issues the Commission has already moved to Stage 2) and to reserve for litigation another 18 issues.<sup>15</sup> According to the Joint Petitioners, “identifying the path forward for these issues involved significant time and discussion to determine where Commission direction is needed (for example, where Joint Petitioners have a disagreement regarding the application of the law) and/or where the passage of time and the development of additional data in a future proceeding could assist in resolution (for example, addressing a new Cooperation Agreement between the City of Pittsburgh and PWSA).”

Exhibit 1 attached to the Joint Petition is a “Checklist” identifying all the issues in this proceeding and includes five columns for information related to each identified issue. This Checklist was ordered to be included in the Partial Settlement by the undersigned ALJs to aid the reader in navigating the record. The five columns are as follows:

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<sup>14</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>15</sup> This number includes sub-issues related to the five broad topics reserved for litigation.

- A. Joint Petition for Partial Settlement Cross Reference
- B. Description
- C. Status (for example: settled, litigation, defer to stage 2, defer to future proceeding, no longer an issue)
- D. Selected Testimony Reference(s)
- E. PUC Directed Question Number as noted in PWSA Exh. RAW/C-1

The 64-page Partial Settlement includes 2 attached exhibits. Exhibit 1 is the aforementioned Checklist, consisting of 14 pages, and Exhibit 2 is PWSA Exh. JAQ/C-17 (1 page).

The Partial Settlement terms are set forth on pages 17-57 of the Partial Settlement. The terms of the Partial Settlement on pages 17-57 are set forth below in verbatim.

### **TERMS AND CONDITIONS OF PARTIAL SETTLEMENT**

The Joint Petitioners respectfully request that both PWSA's Compliance Plan and PWSA's LTIP be approved in accordance with the following terms and conditions:

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#### **FINANCIAL, ACCOUNTING PRACTICES, AND COMMISSION REQUIRED REPORTS**

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##### **A. System of Accounts (52 Pa. Code §65.16)**

1. PWSA shall convert its accounting system to full NARUC Uniform System of Accounts ("USOA") compliance in two phases.
  - a. For Phase I, PWSA has manually mapped the PWSA Chart of Accounts ("COA") to the NARUC USOA so that completion of the 2020 operating budget will include the NARUC USOA to conform and comply with reporting requirements. All Commission required reporting for 2019 (and in the future) will use the NARUC USOA.
  - b. For Phase II, PWSA will fully convert (and therefore automate the process) to the NARUC COA during the implementation of a new Enterprise Resource Planning ("ERP") System. PWSA shall make good faith efforts to complete installation of the Enterprise Resource Planning System by December 2021 given the below processes that must be put into place first:



- i. PWSA needs to issue a Request for Proposal (“RFP”) to develop and implement the new ERP;
  - ii. PWSA expects to issue the RFP by August 30, 2019;
  - iii. PWSA anticipates that the contract will be awarded in early 2020; and,
  - iv. PWSA anticipates an 18-22 month implementation timeframe for financials and billing once the contract is awarded.
- 2. PWSA shall report on its progress on a quarterly basis in the PWSA Compliance Plan Progress Reports. The reporting will include (when available):
  - a. Date when Request for Proposal is issued;
  - b. Notice of selection of an ERP contractor;
  - c. Contractor projected ERP system cost; and
  - d. Detailed implementation schedule.

**B. Annual Depreciation Reports (52 Pa. Code §73.3)**

- 1. PWSA shall fully comply with the Commission annual depreciation reporting requirements by 2024 (for 2023).
- 2. During the interim period and starting in 2020,
  - a. PWSA will file partial annual depreciation reports on the same schedule as full annual depreciation reports, detailing only known and newly constructed plant additions and retirements.
  - b. PWSA will solicit the services of a professional consultant experienced with this type of work and reporting to assist PWSA with compliance.
  - c. PWSA will work with the professional services consultant and the newly implemented Enterprise Resource Planning System to hone the current asset list to allow for full reporting by 2024.

**C. Capital Investment Plan Report (52 Pa. Code §§73.7-73.8)**

- 1. PWSA will file the Capital Investment Plan Reports pursuant to 52 Pa. Code 73.7 and 73.8 starting in 2020 and every five years thereafter.

**D. PWSA Risk and Resilience Assessment and Updated Emergency Response Plan as required by the America Water Infrastructure Act (AWIA) (42 U.S.C. §300i-2)**

1. PWSA will conduct a risk and resilience assessment (“RRA”) as required by the AWIA which is required to be concluded by March 31, 2020. The currently available and voluminous industry standard providing guidance in performing an RRA (from the ANSI – American National Standards Institute, and AWWA – American Water Works Association J100) is subject to additional further baseline guidance pending from the Environmental Protection Agency (“EPA”) about the requirements of the AWIA and this guidance, which totals fifty pages, was released August 1, 2019. Upon review and consideration of the EPA baseline guidance, the RRA will begin in earnest.
2. An Emergency Response Plan is required by the AWIA as well, and due September 30, 2020. Some of the content for PWSA’s Emergency Response Plan is predicated upon the results of the RRA.
3. Pending final completion of its Emergency Response Plan, PWSA is developing (or has developed) internal processes and procedures to comply with Commission regulations and requirements which will ultimately be included in PWSA’s final Emergency Response Plan though these as developed internal processes and procedures may be revised as necessary based on the results of PWSA’s risk and resilience assessment and within the overall context of the Final Emergency Response Plan.
4. PWSA estimates that its final Emergency Response Plan will be finalized September 30, 2020.
5. PWSA will update the status of its Risk and Resilience Assessment and Updated Emergency Response Plan process in the PWSA Compliance Plan Progress Reports.

**E. Security Planning and Readiness (52 Pa Code §§101.1 to 101.7)**

1. PWSA will consult with the Reliability and Emergency Preparedness Section of the Commission’s Bureau of Technical Utility Services (“TUS”) in the development of its physical security, cyber security, emergency response and business continuity plans. PWSA is also working with the Department of Homeland Security and the Federal Bureau of Investigation.
2. Specific dates for completion of the plans which may be updated pursuant to PWSA’s Risk and Resilience Assessment as discussed above in Section III.D:

- a. Physical security plan – December 31, 2019
  - b. Cyber security plan – August 1, 2019
  - c. Emergency response plan – October 31, 2019
  - d. Business continuity plan – October 31, 2019
3. Regarding the Security Self Certification Form:
- a. PWSA will file its Self Certification Form by February 28, 2020.
  - b. PWSA will provide a status report in its October 31, 2019 PWSA Compliance Plan Progress Report regarding its efforts to achieve the above stated target dates as set forth in Section III.E.2.
- F. Notices Regarding Accident, Death, Service Interruptions/Outage, Physical or Cyber Attack and Low Pressure Incidents Required to be Reported to DEP (52 Pa. Code §§65.2, 65.5, 67.1, and 69.1601-69.1603)**
- 1. Reportable Accidents and Occurrences of an Unusual Nature
    - a. PWSA has revised its Internal Investigation Policy and Procedures to ensure that telephone reports are made to Commission staff immediately after becoming aware of:
      - i. the death of a person;
      - ii. an occurrence of an unusual nature, whether or not death or injury of a person results, which apparently will result in a prolonged and serious interruption of normal service; and
      - iii. an occurrence of an unusual nature that is a physical or cyber attack, including attempts against cyber security measures as defined in Chapter 101 (relating to public utility preparedness through self-certification) which causes an interruption of service or over \$50,000 in damages or both.
    - b. PWSA will include these reporting requirements in its final Emergency Response Plan as described above in Section III.D.
  - 2. Unscheduled/Emergency Service Disruptions and Low Pressure Incidents Required to be Reported to Pennsylvania Department of Environmental Protection (“DEP”)

- a. PWSA is in the process of soliciting applicants for an Environmental Health and Safety professional who is anticipated to be hired in 2019. Pending this, a consultant is currently serving in this role to assist in developing and communicating a Standard Operating Procedure (“SOP”)

for communicating Emergency Service Disruptions to the Commission, among others (including the public);

- i. PWSA Exh. RAW/C-41 is its SOP for Reporting Low Pressure Readings, Breaks and Boil Water Advisories. PWSA Exh. RAW/C-42 sets forth the internal work flow process for the reporting.
  - ii. The SOP will be included in PWSA’s Emergency Response Plan as described above in Section III.D.
- b. PWSA’s revised communication protocols include notification to the Commission:
  - i. to comply with 52 Pa. Code § 69.1601 (unscheduled water service interruptions and associated actions); and,
  - ii. of any low pressure incident or other service interruption for which it notifies the Pennsylvania Department of Environmental Protection.

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**METERED SERVICE AND METER TESTING (52 PA. CODE §§65.7, 65.8)**

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**G. Metering Unmetered Properties (52 Pa. Code §65.7)**

- 1. Identification of Unmetered/Unbilled and Flat Rate Properties
  - a. PWSA has accepted a proposal from, Professional Engineering Consultants, Buchart Horn entitled 2019 Unmetered & Flat Rate Properties Evaluation Project dated April 17, 2019 to assist in identifying and evaluating unmetered properties and flat-rate customers. PWSA Exh. RAW/C-37 is the Buchart Proposal.
    - i. PWSA will actively search for additional municipal, flat rate and other unmetered properties through various GIS and other data sources. When found, these properties will be added to the list of properties requiring meters.
    - ii. PWSA has started site inspections of unmetered facilities.
  - b. PWSA commits to the following timeframes consistent with the PWSA accepted Buchart Horn proposal:

- i. By June 29, 2020 unmetered and/or unbilled locations shall be identified.
  - ii. PWSA will provide status updates regarding this process in the PWSA Compliance Plan Quarterly Reports and, once complete, PWSA will identify all the newly metered and/or previously unbilled properties.
- 2. Meter Installation
  - a. PWSA will install meters at all unmetered properties where such meters can physically be installed. Properties that may not be able to be separately metered would include those with plumbing restrictions, building integrity to safely support the needed modifications, site constraints (internal and external) as well as other physical limitations. Based on currently available information, PWSA estimates the following numbers of unmetered properties exist:
    - i. 200-400 municipal buildings unmetered;
    - ii. 500 flat rate customers; and
    - iii. 300-400 municipally-owned fountains, pools, etc.
  - b. PWSA intends to do the following:
    - i. Hire consultants, plumbers, and outside contractors to assist in the metering of unmetered properties as needed.
    - ii. Assign a project manager who will be responsible for scheduling, planning, and site visits and will ensure that all of the proper materials and equipment are on-hand to execute the metering of the municipal facilities in a timely manner.
    - iii. Complete the metering of all unmetered municipal and flat rate properties where meters can be installed within 5 years or by December 31, 2024, and will accelerate this timeframe, if possible.
- 3. Costs of metering party water service lines and/or converting flat rate customers to metered customers:
  - a. For non-municipal properties, PWSA will pay for the meter and the meter installation, but Applicants will be required to pay for any plumbing changes, including service lines in accordance with Part III, Section B.13 of PWSA's approved Tariff, and other related appurtenances required to make the installation comply with applicable PWSA requirements and

county and local plumbing codes.

- b. For municipal properties, as this issue is within the City Cooperation Agreement between PWSA and the City of Pittsburgh, the parties agree to submit briefs regarding their position to include their response to the applicable Commission Directed Questions.

## **H. Implementing Rates for Unmetered and/or Unbilled Properties**

- 1. Non-Municipal Accounts
  - a. Once meters are installed for previously unmetered or unbilled non-municipal properties, PWSA will bill the account in full pursuant to the applicable tariff rate.
  - b. All currently unmetered, flat rate billed customers will continue to pay a flat rate and customer charge until meters are installed after which PWSA will bill the account in full pursuant to the applicable tariff rate. The “flat rate” will be based on estimated usage.
  - c. Properties that may not be able to be separately metered because of the configuration of their service lines:
    - i. will be billed at the appropriate single/two/three family or commercial flat rate; and,
    - ii. the characteristics of these unmetered properties and the reasonableness of the current flat rate will be reviewed in any future rate proceeding.
- 2. Because implementing rates for unmetered and/or unbilled municipal accounts within the City of Pittsburgh is an issue within the City Cooperation Agreement between PWSA and the City of Pittsburgh, the parties agree to submit briefs regarding their position to include their response to the applicable Commission Directed Questions.

## **I. Allocation of Public Fire Hydrant Costs**

- 1. In the next rate case, PWSA will provide a class cost of service study reflecting all public fire hydrant costs. PWSA will present a rate design reflecting allocation of 25% of all public fire hydrant costs to the City with its next rate case proposal. PWSA reserves the right to propose a phase-in period at that time.
- 2. Because the billing plan for public fire hydrants within the City of Pittsburgh is an issue within the City Cooperation Agreement between PWSA and the

City of Pittsburgh, the parties agree to submit briefs regarding their position to include their responses to the applicable Commission Directed Questions.

**J. PWSA's Meter Replacement and Testing Plans**

1. PWSA is undertaking a comprehensive metering program to identify and replace non-working meters (of all sizes), upgrade testing processes and equipment, and ensure that PWSA has the technical ability to reasonably accommodate customer requests for meter testing. PWSA retains the option to test meters using the American Water Works Association testing protocol.
2. Customers will not be required to pay for the replacement of meters and metering equipment, unless damage resulted from the negligent or willful act of the customer.
3. In response to the Commission's Directed Question directing the parties to discuss "the feasibility of implementing a meter testing triage plan" within the stated hierarchy prioritizing out-of-compliance meters used to provide high volume service (*see* PWSA Exhibit RAW/C-1 at 6, Question number 27):
  - a. PWSA will prioritize the testing/replacement of large meters (meters 3 inches and larger), and will make its best efforts to complete the testing/replacement of all large meters/measuring chamber and registers within 3 years.
  - b. PWSA intends to replace all intermediate meters (meters equal to or larger than 1 ½ inch in diameter and equal to or smaller than 2 inches) that have been in service more than 8 years, or where the installation date is unknown, and will make its best efforts to complete the replacement of intermediate meters within 3-5 years.
  - c. PWSA intends to replace all of these small meters (meters one inch in diameter and smaller) that have been in service more than 20 years, or where the installation date is unknown, and will make its best efforts to complete the replacement of small meters within 5-7 years.
  - d. PWSA's recent efforts enable it to now accommodate customer-generated meter testing request.
4. Actions PWSA has taken to implement its Meter Replacement and Testing Plan
  - a. In April 2019, PWSA implemented a Non-Access Campaign directed to customers of all meter sizes with meters being addressed on a first-come-first served basis to address aged actual meter readings and estimated meter readings. Customers are being notified via letters, phone calls, and

posting of notices to make appointments for repair/replacement of the water meters.

- b. PWSA entered into a contract in May 2019 to test water meters 3” and greater in-line or at the vendor’s testing facility. With the addition of this vendor, PWSA is able to accommodate customer-generated meter testing requests.
  - c. Regarding all 2” or less meters, PWSA has purchased and installed a state of the art water meter testing bench in its General Warehouse in March 2019 and currently tests all meters pulled from service. This equipment also enables PWSA to accommodate customer-generated meter testing requests.
5. Current Status of PWSA’s Meter Replacement and Testing Plan (*See also* PWSA Exh. RAW/C-38)
- a. Testing/Replacing Large Diameter Meters (meters 3 inches and larger)
    - i. PWSA has identified 806 large diameter meters that have been in service more than 8 years, or where the installation date is unknown. PWSA intends to either test, repair, or replace the measuring chamber and register of all large meters that have been in service for more than 8 years, or where the installation date is unknown.
    - ii. PWSA will comply with Chapter 65.8 and begin testing meters on a regular interval, so that no large meter is in service longer than 8 years without testing.
  - b. Testing/Replacing Intermediate Diameter Meters (meters equal to or larger than 1 1/2-inch in diameter and smaller than 2 inches)
    - i. PWSA has an estimated backlog of less than 2,000 intermediate diameter meters that have been in service more than 8 years or where the installation date is unknown.
    - ii. PWSA will test a fraction (5-10%) of the intermediate diameter meters pulled from services and not reused for quality control and to establish accuracy levels.
    - iii. PWSA will comply with Chapter 65.8 and begin testing meters on a regular interval, so that no intermediate meter is in service longer than 8 years without testing.



- c. Testing/Replacing Small Meters (1-inch diameter and smaller)
  - i. PWSA has an estimated backlog of 50,000 small meters that have been in service more than 20 years, or where the installation date is unknown.
  - ii. PWSA will test a fraction (5-10%) of the small meters pulled from services and not reused for quality control and to establish accuracy levels.
  - iii. PWSA will comply with Chapter 65.8 and begin testing meters on a regular interval, so that no small meter is in service longer than 20 years without testing.

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**WATER CONSERVATION MEASURES, UNACCOUNTED-FOR WATER AND  
LEAK DETECTION (52 PA CODE §§65.11 AND 65.20)**

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**K. Water Conservation Measures**

1. Starting in 2019, PWSA will begin to take steps to comply with the items required by 52 Pa. Code §65.20(1) – (3) (efficient water use brochure once a year; large water use audit availability brochure; use of efficient plumbing fixtures). Those steps include:
  - a. educational brochure at least once a year;
  - b. annual water audits for large users (as per PA Dept. of Environmental Protection, Division of Water Use Planning Water Audit Procedures); and,
  - c. customer notification (billing inserts) regarding water-saving plumbing fixtures.
2. In order to comply with 52 Pa Code §65.11, PWSA shall develop standard operating procedures (“SOPs”) for situations that require mandatory conservation measures, to include communication and response protocols.
  - a. Issues to be included in the SOPs:
    - i. Provisions that, in the event such conservation measures are required, PWSA will notify customers via traditional lines of communication which include automated telephone calls, social media, and the website.

- ii. PWSA will evaluate the feasibility of pursuing interconnections with other regional water suppliers to enhance system resiliency. This evaluation will be completed and resulting changes to the process incorporated into PWSA's SOP regarding mandatory conservation measures.
- b. Timing for SOP development:
  - i. PWSA will develop a preliminary SOP by February 28, 2020, reflecting at a minimum its ability to implement an SOP without further necessary approvals from non-PWSA entities collaborating in such measures.
  - ii. To the extent the SOP requires further approval from non-PWSA entities, PWSA will revise its preliminary SOP to incorporate procedures reflecting such further approvals and finalize its SOP by no later than December 31, 2020.
- c. PWSA will incorporate the SOPs into its Emergency Response Plan when it revises its Emergency Response Plan as described in Section III. D.
- 3. PWSA will update its progress on these items as part of the PWSA Compliance Plan Progress Reports.
- L. Standards of Design – PWSA Water Distribution System Master Plan (52 Pa. Code §65.17(b))**
  - 1. PWSA Water Distribution System Master Plan
    - a. PWSA is undertaking a master planning effort which will develop a detailed process to clearly identify needed improvements to the distribution system, to develop criteria for evaluating and ranking candidate water mains for renewal, present an assessment of expected growth in the system, assess vertical assets and recommend a five year plan of capital improvements and annual priorities.
    - b. The Final Water Distribution System Master Plan, with a targeted completion date of late 2019 to mid-2020, will also address pressure zones and gradients, pumping, storage, transmission mains, distribution mains, metering, non-revenue water and system emergency interconnections.
    - c. The Final Water Distribution System Master Plan will also address master metering and non-revenue water and will include a water audit that follows American Waterworks Association ("AWWA") guidance using available data. The Plan will also recommend locations for

implementation of the district metering program.

- d. The Final Water Distribution System Master Plan will inform any future revisions that may be needed to PWSA's Long-Term Infrastructure Implementation Plan ("LTIIIP") which will be presented for the Commission's consideration as part of the LTIIIP process.
- e. PWSA St. C-1SD and PWSA Exh. RAW/C-36 is PWSA provide updated information related to the Water Distribution System Master Plan to include the Scope of Work dated March 15, 2019 and the draft Table of Contents for the Final Water Distribution System Plan.

2. Replacement of 4-Inch Diameter Water Mains

- a. PWSA places a high priority on the replacement of 4 inch diameter mains as part of small diameter water main replacement program.
- b. The prioritization matrix to be developed as part of PWSA's Water Distribution System Master Plan will inform the ranking of PWSA's various projects to include the replacement of four inch diameter water mains.
- c. PWSA will provide updates as part of the Compliance Plan Progress Reports as to the timeline and projected completion date for the replacement of all 4-inch diameter water mains.

**M. Unaccounted-for (Non-Revenue) Water (52 Pa. Code §65.20(4))**

- 1. PWSA will use the American Waterworks Association ("AWWA") Water Loss Control Methodology and free software, which evaluates non-revenue water.
  - a. PWSA shall use the AWWA definition of "non-revenue water" which includes such items as fire-fighting, testing and flushing under the heading of "unbilled authorized consumption."
  - b. PWSA will submit its first AWWA Audit to the Commission prior to April 30, 2020.
    - i. Where actual information is not available the AWWA Audit will be based on available information to develop the procedures for estimating and recording accurate data when it is available.
    - ii. As part of PWSA's Water Distribution System Plan, PWSA will finalize its plan for annual AWWA Audits based on metered

withdrawals from the river, metered treated water delivered to the distribution system and estimates of non-revenue water.

2. Records of Estimated Flows for Street Sweeping, Blow-offs, Main Breaks, flushing, etc.

- a. Water taken by Pittsburgh's Department of Public Works ("DPW") has not historically been metered by PWSA. PWSA has instructed the City Department to meter each and every water use using water meters

provided for each DPW division and have them installed on hydrants to record water use for street sweeping and paving activities.

- i. To the extent possible, PWSA has begun estimating and recording non-revenue water used for blow-offs, street sweeping, flushing, firefighting, main breaks, tank overflows, etc.
  - ii. PWSA records water used for flushing after main breaks by having crews record the time flushed and using flow gauges to estimate water discharge rates used.
- b. PWSA has assigned one of its existing operations senior managers, with exhaustive knowledge of the system, to implement its valve operation, flushing and hydrant inspection program and this effort is expected to be documented in a Standard Operating Procedure ("SOP") by October 2019.
- c. PWSA is currently implementing a Pennsylvania Department of Environmental Protection permitted flushing program to facilitate its orthophosphate addition program.

**N. Leak Detection and Leak Survey (52 Pa. Code §65.20(5))**

- 1. PWSA's Operations Department has developed a Leak Detection Program and restructured its staff to include a new team manager with direct leak detection expertise to improve its leak detection program. The team manager is currently working with one foreman and four leak detection specialists to ensure continuity of system knowledge and standard operating procedures for future operation.
  - a. The Leak Detection Program was launched in April 2019 to modernize leak detection equipment to enhance leak detection accuracy and improve coverage as well as to adopt new leak detection technology to accurately locate breaks.
  - b. PWSA St. C-1SD (Weimar) pp 15-16 and PWSA Exh. RAW/C-39 provide additional detail about the Leak Detection Program and to-date

results to include details regarding prioritization for larger transmission pipes.

- c. PWSA's Leak Detection Program will be consistent with American Water Works Association ("AWWA") standards and procedures by 2020.
- d. PWSA estimates that its Leak Detection Program can be fully operational completed in three to four years.
- e. Until PWSA's Leak Detection Program is fully implemented, PWSA will update on an annual basis in the PWSA Compliance Plan Progress Reports:
  - i. A breakdown of historical costs related to the program; and,
  - ii. Updated timeline for full implementation of the Leak Detection Program.

**O. Source of Supply Measurement (52 Pa Code §§65.14 and 65.20(6))**

- 1. PWSA's Water Distribution System Master Plan will identify where additional meters may be needed. A number of existing facility flow meters were recently refurbished as noted below. Further capital projects related to meter operability and measurement are being evaluated and the targeted completion date for the meter operability and measurement plan is late 2019.
- 2. Status of current PWSA Flow Metering Program
  - a. Meters at Water Intakes:
    - i. PWSA is using individual filter gallery effluent flow meters to measure the volume of produced water from the Water Treatment Plan. The total flow from plant to distribution is calculated by summing the individual meter flows, which is reported continuously. Flow meter calibration is performed on a schedule basis. Per manufacturer recommendation, the flow tubes are factory calibrated, the flow transmitting device is calibrated on a periodic basis one per year.
    - ii. The Allegheny River is PWSA's only supply source. This source is brought into the water treatment plant via the Ross Pump Station. This meter is operational, recently rehabilitated, tested and found accurate.
  - b. Fox Chapel

- i. PWSA has installed a flow meters at the Fox Chapel Pumping Station to show where the water use occurs.
- c. System Delivery Flow Meters:
  - i. PWSA is currently refurbishing the existing flow meters in the Bruecken and Aspinwall pump stations to establish the point of system delivery meters. All flow meters at the Aspinwall Pump Station are operational. Flow meters at the Bruecken Pump Station for the flow to Highland 2 Reservoir are operational. Flow meters at the Bruecken Pump Station for the flow to Highland 1 Reservoir are still being rehabilitated.
  - ii. Insertion-type flow meters were installed at the Highland 1 Reservoir primary rising mains to monitor flow volume going directly into the system from the Bruecken Pump Station.
- 3. PWSA's flow metering program is anticipated to include:
  - a. Testing and calibration plan for all facility flow meters;
  - b. Rehabilitation and calibration of flow meters at existing pump stations (Herron Hill Pump Station, Herron Hill Tank Pump Station, Howard Pump Station, Mission Pump Station, Lincoln Pump Station, Saline Pump Station);
  - c. Installation of district flow meters at locations recommended by the Water Distribution System Master Plan within the distribution system; and,
  - d. Installation of flow meters at existing booster chlorination facilities as part of a booster chlorination system rehabilitation project.
- 4. The Water Distribution System Master Plan will provide a table similar to Table 4-3 of PWSA 40 year plan of 2012 explaining how and when each of the meters listed on the Table will be operational and accurate.
- 5. PWSA Exh. RAW/C-40 provides the most current System Flow Meter Operation Status available as of July 31, 2019.

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**CONTRACTS/AGREEMENTS WITH CUSTOMERS,  
OTHER MUNICIPALITIES AND CITY OF PITTSBURGH**

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**P. Cooperation Agreement Between City of Pittsburgh and PWSA**

- 1. Once a newly negotiated Cooperation Agreement is approved by the City of Pittsburgh and signed by the Mayor, the new Cooperation Agreement will be

filed with the Commission and subject to the Commission's review and approval process in accordance with 66 Pa. C.S. §§507 and 508. The parties agree such process will not be part of this Compliance Plan proceeding, and will be part of a future proceeding to be referred to the Office of Administrative Law Judge for a formal on-the-record proceeding. PWSA will make such a request for a formal on-the-record proceeding with its §507 filing, which will be filed no later than upon PWSA's next base rate filing.

2. Parties are free to raise issues related to the ratemaking aspects of the agreement in any future rate base proceeding.
3. PWSA St. C-2SD (Lestitian) pp 3-6 sets forth the status of both the current and the newly proposed Cooperation Agreement as of August 2, 2019.
4. The parties agree to submit briefs regarding their positions related to the existing City Cooperation Agreement, effective January 1, 1995, to include their responses to the applicable Commission Directed Questions.
5. The parties agree that the following principles should apply to the Commission's review of a Cooperation Agreement that is filed following approval by the City:
  - 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.
  - 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.
  - d. PWSA is free to propose a phase-in period or other modifications to otherwise applicable laws, regulations, tariffs, and the existing Cooperation Agreement, subject to the rights of other parties to oppose PWSA's proposals.

**Q. Capital Lease Agreement Between City of Pittsburgh and PWSA**

1. PWSA will purchase the system for \$1 when eligible in 2025, unless a new arrangement is renegotiated and approved by the Commission prior to that time.

**R. Bulk Water: Sales for Resale**

1. Within 120 days of the final Commission Order in this proceeding pursuant to 66 Pa.C.S. §507, PWSA will file with the Commission in a separate docket all

bulk water sales contracts entered into with municipalities and other public utilities (both prior to and after April 1, 2018). No party is waiving its right to present its position regarding the Commission's legal authority to vary, reform or revise these contracts entered into prior to the Commission assuming jurisdiction over PWSA on April 1, 2018.

2. PWSA agrees to file all future contracts with the Commission as required by Sections 507 and 508.
3. In the next rate case, PWSA will propose a resale rate(s) that will be included in its tariff and charged to new bulk water sales.
4. PWSA will provide costs of providing these wholesale services as part of cost of service study performed for next rate case, and seek to update rates to reflect the current cost of service.

**S. Bulk Wastewater Conveyance Agreements**

1. Within 120 days of the final Commission Order in this proceeding pursuant to 66 Pa.C.S. §507, to the extent that PWSA can locate them, PWSA will file with the Commission in a separate docket all bulk wastewater conveyance agreements that it has entered into with municipalities and other public utilities (both prior to and after April 1, 2018). No party is waiving its right to present its position regarding the Commission's legal authority to vary, reform or revise these contracts entered into prior to the Commission assuming jurisdiction over PWSA on April 1, 2018.
2. PWSA agrees to file all future wastewater conveyance contracts with the Commission as required by Sections 507 and 508.
3. In the next rate case, PWSA will propose a rate(s) that will be included in its tariff and charged to new bulk wastewater conveyance arrangements.
4. If PWSA is unable to locate a pre-existing bulk wastewater conveyance agreement, PWSA will include the rate in its tariff.
5. To the extent ALCOSAN assumes responsibility for any existing wastewater conveyance agreements, PWSA will file notice with the Commission.

**T. Billing Arrangement For City of Pittsburgh Residents Served by Pennsylvania American Water Company ("PAWC")**

1. The discount shall be eliminated by December 31, 2019.
2. Based on the May 2019 billing data, over 80% of residential customers are receiving a discount of \$1 or less, over one-third of the residential customers



are receiving no discount; and the average discount customers are receiving is less than 50 cents per month. PWSA St. C-2SD (Lestitian) pp 6-7 provides this most current data.

3. PAWC will provide notice to customers before the discount is eliminated, over the course of two billing cycles.

**U. Billing Arrangement for Allegheny County Sanitary Authority (“ALCOSAN”) Charges**

1. PWSA reserves the right to develop and propose a service charge related to ALCOSAN charges in its next wastewater base rate filing. All parties retain their rights to review, support or challenge the proposal in that proceeding.

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**TARIFF AND OTHER MISCELLANEOUS ISSUES (NOT ADDRESSED ELSEWHERE)**

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**V. Limitations on Liability (52 Pa Code §67.87)**

1. Parties do not recommend revisions to PWSA tariff to include specific dollar amounts.

**W. Line Extensions (52 Pa Code §§65.1, 65.21-65.23)**

1. Parties agree to brief their legal views regarding applicability of the Municipality Authorities Act (“MAA”), 53 Pa.C.S. §5601, et seq., and the Commission’s line extension regulations at 52 Pa Code §§65.1, 65.21-65.23 and their response to the relevant Commission Directed Questions.

**X. Residential Fire Protection and Standby Charges (52 Pa. Code §69.169)**

1. PWSA identified 49 current customers being charged a separate private fire protection charge pursuant to PWSA’s tariff.
  - a. PWSA reviewed each of these accounts and, of these accounts, there were four affected customers. The remaining 45 accounts are classified as commercial properties (which includes multi-family properties).
  - b. For the four affected customers, PWSA has:

- i. changed the rate code for each account so that the private fire protection customer charge will no longer be assessed;
  - ii. processed a bill credit for each account to refund amounts paid over the past four years consistent with PWSA's residential customer refund policy upon coming under the Commission's jurisdiction effective April 1, 2018; and,
  - iii. telephoned each customer advising him/her of the option to receive a one-time payment in lieu of the bill credit upon return to PWSA of a signed refund request.
- c. The total amount of refunds due for all four accounts is \$4,045.80.
- 2. PWSA St. C-4SD (Weimar) pp 2-3 includes this information. PWSA Exh. JAQ/C-17 (also included with this Partial Settlement Petition as Exhibit 2) is a proposed pro forma tariff supplement to be submitted as part of a compliance tariff to be filed in this matter upon final Commission approval.
- 3. In its next base rate case:
  - a. PWSA will include a separate rate for residential, private fire protection service that excludes all standby costs.
  - b. PWSA will provide any evidence of its investment in separate or larger service lines, meters, or other customer specific facilities for residential customers with automatic fire protection systems.

**Y. Residency Requirement**

- 1. Parties agree to brief this issue to include their response to the relevant Commission Directed Questions.

**Z. Ownership of Wastewater Laterals**

- 1. PWSA will conduct a study to investigate the legal, economic and operational feasibility of owning and/or maintaining (now privately owned) wastewater laterals within public easements.
- 2. The report will include the cost, feasibility and appropriateness of alternatives such as facilitating the provision of private line insurance rather than PWSA owning and/or maintaining the wastewater laterals.

3. PWSA to provide update of status of study in the PWSA Compliance Plan Progress Reports with the final report to be shared with all parties by January 15, 2021.

**AA. Stage 1 Commission Staff Requested Documents**

1.	Exh. No.	Document Title
<p>The following documents were entered into the record via Stipulation on August 21, 2019 (they were included with PWSA St. No. C-1SD (Weimar)).</p> <p>Directed Question Reference</p>		
1.5	Stip Doc – 1	Performance Audit Pittsburgh Water and Sewer Authority Report by the Office of City Controller dated February 2017
1.6	Stip Doc – 2	IMG Briefing to the Blue Ribbon Panel on the PWSA Restructuring Options Assessment dated November 8, 2017
1.7	Stip Doc – 3	PA Auditor General Performance Audit Report The Pittsburgh Water and Sewer Authority dated November 2017
1.7	Stip Doc – 4	County of Allegheny Office of the Controller Performance Audit Report on the Program Effectiveness of the Allegheny County Health Department's Programs to Monitor and Respond to Elevated Lead Water Levels for the Period January 1, 2013 Through April 30, 2017 dated July 25, 2017
1.12	Stip Doc – 5	DEP/EPA Results Of The Comprehensive Performance Evaluation For The Pittsburgh Water & Sewer Authority Aspinwall Water Filtration Plant, September 18-22, 2017

2. The following additional document was provided with PWSA St. No. C-1SD in response to Commission Staff requested documents

Reference	Description
Directed Question Number 1.11	Exhibit RAW/C-33: PWSA Letter to DEP Nov 20 2017 in Response to Oct 25 2017 DEP Administrative Order

**BB. Stage 2 Commission Staff Requested Documents**

1. The parties agree that submission of the documents referenced below will be addressed in Stage 2 because they all relate to Stage 2 issues.
  - a. Stormwater - Plan for Inventory of stormwater assets and conditions [Directed Question 1.2]
  - b. Stormwater - MOU stormwater [Directed Question 1.3]
  - c. Stormwater - PWSA responses to EPA regarding (MS4) stormwater permit [Directed Question 1.4]
  - d. Stormwater - Wet Weather Feasibility Study [Directed Question 1.13]
  - e. Stormwater - Long Term Wet Weather Control Plan [Directed Question 1.13]
  - f. Stormwater - Green First Plan [Directed Question 1.14]
2. Notwithstanding the agreement of the parties to defer submission of these documents, if the Commission directs that these documents should be filed as part of its Stage 1 review, PWSA will file the documents within 30 days of the final order.

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**CAPITAL PROJECTS/CONSTRUCTION/BIDDING PROCESSES**

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**CC. Construction Project Tracking and Evaluation**

1. PWSA tracks performance of over 50 measures (metrics), including cost effectiveness and performance measures, in its Headwaters tracking database. In addition, it tracks additional information on capital projects in its eBuilder system. PWSA intends to add roughly 50 additional measures to the Headwaters tracking database that includes agreed to performance metrics from the last rate case settlement, Compliance Plan and Compliance Plan

Settlement.

2. Within 60 days of entering into this Partial Settlement, PWSA will provide I&E with a list of proposed metrics on which it will report. The final list and when PWSA will begin reporting those metrics in the PWSA Compliance Plan Progress Reports will be mutually agreed to by I&E and PWSA. Any metrics mutually agreed to will be included in PWSA's Compliance Plan Progress Reports.
3. To the extent PWSA proposes any additional or changed metrics for reporting, it will provide that information as part of the PWSA Compliance Plan Progress Reports.
4. PWSA will provide this data in the PWSA Compliance Plan Progress Reports and make these and all performance metric results available to the parties/Commission in next rate case.

**DD. Selection Processes and Existing Contractors**

1. Competitive Bidding.
  - a. PWSA shall continue to adhere to the requirements of the Municipality Authorities Act ("MAA") regarding competitive bidding. Generally, in accordance with the MAA, all projects over \$20,600 must be bid.
  - b. PWSA shall not be prohibited from dispensing with competitive bidding in instances or for categories of expenditure where the MAA (or other applicable law) permits an exception to the competitive bidding requirement.
  - c. On an annual basis as part of the PWSA Compliance Plan Progress Report, PWSA shall provide a list of each construction contract in the prior year that was awarded without competitive bidding as well as how those non-competitively bid contracts compare to the total number of construction contracts awarded.
2. PWSA Exh. RAW/C-34 provides PWSA's Project Operators for Open and Active Projects as of July 31, 2019. PWSA will provide updated design engineer and company affiliation for each project in the PWSA Compliance Plan Progress Report.

**EE. Open and Active Project Information**

1. Updated PWSA Exhibit RAW/C-10 provides updated information regarding the Project Name, Project Descriptions, Project Justification, Budgeted Costs,

Source of Funds, Start Date, Date of Completion and In Service and Consultant/Contractor for open and active projects as of the date of August 2, 2019.

2. PWSA will provide updated details about the funding sources that it plans to use for each project in the PWSA Compliance Plan Progress Reports.

**FF. Clearwell Improvements Projects**

1. A number of thorough reviews of various alternatives to address improvements to the Clearwell have been undertaken over the years. After an in-depth evaluation of all these alternatives, the one currently underway by PWSA was deemed to provide the most long-term benefits and to be the fastest one available to address current multiple operations risks as explained more fully in PWSA Exhibit RAW/C-30 (Alternatives Evaluation – Clearwell Redundancy Project March 2017 Report).
2. PWSA Board Resolution 91 adopted on May 16, 2019:
  - a. Authorizes PWSA Executive Director to accelerate implementation of highly critical facilities consistent with state and federal agency recommendations and requirements.
  - b. Identifies the repair and replacement of the Aspinwall Clearwell is designated as one of PWSA’s high priority projects.
  - c. PWSA Exh. RAW/C-35 is Board Resolution 91.
3. Improvements to the Clearwell involve a Multi-Phase Program approach:
  - a. Emergency Bypass
  - b. Reservoir Pump Station and Rising Main
  - c. Pump Station Improvements
  - d. Lanpher Rising Main
  - e. Highland No. 2 Covers and Liners
4. Pending Consent Order and Agreement with the Pennsylvania Department of Environmental Protection (“DEP”).

- a. PWSA's projects related to the Clearwell Improvements shall proceed in accordance with the final approved Consent Order and Agreement with DEP.
- b. At the appropriate time, PWSA will update its LTIIIP consistent with the final approved Consent Order and Agreement with DEP.
- c. PWSA will supplement its previously served testimony to provide additional information about the Consent Order and Agreement and, if available, will include the final approved Consent Order and Agreement.

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**LONG-TERM INFRASTRUCTURE IMPLEMENTATION PLAN ("LTIIIP")  
(52 PA CODE §121)**

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**GG. Materials Report, Valves, Prioritization**

1. In the PWSA Compliance Plan Progress Reports, PWSA will provide the comprehensive materials report and updated information about the types and sizes of valves once its GIS is updated and this information is available.
2. In the PWSA Compliance Plan Progress Reports, PWSA will provide additional information regarding the prioritization of main replacements, valve replacements.
3. PWSA will notify the parties in the PWSA Compliance Plan Progress Report when the computerized maintenance management system (CMMS) project is implemented.

**HH. Customer Owned Lead Service Lines**

1. At the appropriate time, PWSA will file a Petition to Amend its Long Term Infrastructure Improvement Plan to include estimates on the number of customer-owned (i.e., private side) lead service lines, and the expected expenditures for their replacement, to the extent that the Commission has authorized or directed PWSA to replace such facilities.

**II. Metering Unmetered Properties**

1. PWSA's amended LTIIIP will include information about its plan to meter unmetered properties to include the timeline consistent with Section IIb above.

**JJ. Workforce Development**

1. PWSA Hearing Exh. 3 includes the additional information set forth in PWSA St. C-1R (Weimar) at 70-72.
2. PWSA Hearing Exh. 3 also provides more current information regarding:
  - a. workforce challenges as it relates to its LTIP schedule including any processes and/or plans to specifically address the issues identified in PWSA's Compliance Plan at Appendix A, pp. 5 and 8; and,
  - b. how PWSA will build a workforce to meet the needs of increased capital spending (including specific detail for how staffing projections were quantified, and an estimate of the number of required contractors. If an estimate of required contractors is not available at this time, PWSA will provide an explanation as to why such estimate is not available and explain its planned use of contractors over the term of this LTIP).

**KK. Construction Coordination with Other Utilities and Municipalities**

1. PWSA Hearing Exh. 3 includes the additional information set forth in PWSA St. No. C-1R (Weimar) at 72.
2. PWSA Hearing Exh. 3 includes other more current information regarding how PWSA will utilize resources (such as the Pennsylvania 811 Coordinate PA web service application that shows projects and project time frames for users to readily identify opportunities for collaboration between projects) to meet the need for increased coordination with local utilities and local, state, county and city government agencies.
3. PWSA Hearing Exh. 3 also includes further explanation about how efforts between PWSA and the City of Pittsburgh are underway to address the need for additional engineering staff to be hired by the City to improve coordination efforts between PWSA and the City as well as any other necessary actions that are being explored to address this issue.

**LL. Distribution System Improvement Charge ("DSIC")**

1. PWSA agrees to seek any necessary waivers of Act 11, including waivers of 66 Pa. C.S. §§1353, 1357, 1358 before it seeks Commission approval of a Distribution System Improvement Charge ("DSIC") that uses an annual, levelized charge as the basis for establishing DSIC rates, subject to subsequent true-up for PWSA's actual experience.
2. If such waivers are granted:
  - a. PWSA agrees to separately track and account for all DSIC proceeds and expenditures in a separate accounting mechanism, and to specifically



designate all revenue collected through the DSIC to future DSIC-related spending, or refunds to customers, if necessary.

- b. With regard to quarterly updates of the DSIC; to minimize over or undercollections, PWSA agrees to adjust the DSIC percentage by October 1 if projected total billings and expenditures for the remainder of the year indicate that a material over or under collection of plus or minus 2% is likely to occur. However, PWSA agrees to make adjustments in earlier

quarters if it is able to accurately determine that a material over or under collection is likely to result by the end of the year.

- 3. In its next base rate case, PWSA intends to seek Commission approval of a DSIC with inclusion of costs related to private-side lead service line replacement, to the extent that the Commission has authorized or directed PWSA to replace such facilities and include those activities in its LTIP; all parties reserve their rights to review and challenge inclusion of costs in the DSIC. Inclusion of costs in the LTIP does not mean that PWSA can recover those costs through the DSIC.
- 4. No Party waives any right it might have to challenge the reasonableness of PWSA's DSIC calculations or its proposed cap, the prudence of any expenditures claimed to be included in the DSIC the recovery of any category of costs claimed to be included in the DSIC, the reasonableness and/or lawfulness of the DSIC formula proposed by PWSA, or any other aspect of a PWSA DSIC proposal included with PWSA's base rate case.

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## **CUSTOMER SERVICE, COLLECTIONS AND CUSTOMER ASSISTANCE PROGRAM**

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### **MM. Issues Deferred to Stage 2**

- 1. In accordance with Commission's May 15, 2019 Secretarial Letter granting the Parties' Expedited Motion for Extension of Commission-Created Deadlines, the following issues have been deferred for further consideration as part of the Stage 2 Compliance Plan proceeding:
  - a. The language, format and method of providing suspension and termination notice pursuant to Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations.
  - b. PWSA's compliance with the Discontinuance of Service to Leased Premises Act ("DSLPA"), 66 Pa.C.S. §§1521-1533.

- c. PWSA's plan for collections (to include strategies to reduce overall uncollectibles and to ensure collections practices for residential customers are consistent with legal requirements).
  - d. Personal Contact Requirements of 52 Pa. Code §§56.94 and 56.336.
- 2. Interim processes and information to be addressed during Stage 2 Collaboratives
  - a. Implementation of PWSA telephone process day prior to service termination
    - i. PWSA has fully implemented the process described on page 8 of the Parties' Expedited Motion for Extension of Commission-Created Deadlines.
    - ii. PWSA will continue to implement, monitor and collect data associated with this process until the Commission directs otherwise or a mutually agreed upon approach is reached during the Stage 2 collaborative process.
    - iii. In PWSA's Compliance Plan Progress Reports, beginning with the Compliance Progress Report to be submitted with supplemental testimony, PWSA will provide the following information related to its interim process:
      - a) The phone call completion rate, separately accounting for incomplete or disconnected phone numbers, calls that went to the consumer's voicemail, and calls where a consumer answered the phone; and,
      - b) The number of consumers who prevented termination after receiving a phone call, separately indicating the reason termination was avoided (for example, submission of a medical certificate; submission of a Protection from Abuse or other court order indicating the consumer is a victim of domestic violence; entering a deferred payment arrangement; paying the full balance; if there is a pending hardship fund application; or enrollment in PWSA's Winter Moratorium).
    - iv. PWSA will engage in good faith discussions of potential policies and procedures that it might be able to agree to put in place to enable its employees to provide personal contact immediately prior to termination beyond a telephone call the day before termination and

whether that process and procedure is compliant with the Commission's regulations.

- v. PWSA will elicit the help of BCS/Commission staff to gather information about the policies and procedures at place at other Pennsylvania regulated utilities for complying with the Commission's regulations and engage in a discussion with the stakeholder collaborative about such processes.
- vi. Consistent with the Expedited Motion, PWSA agrees to coordinate a discussion with the parties to assess the progress on this issue on October 25, 2019 and January 25, 2020. If the parties (with BCS sign off) have not reached a collaborative resolution by January 25, 2019 (and no extension of time has been mutually agreed to by the parties), then any party has the option to petition the Commission on this issue and PWSA agrees (to the extent necessary) to seek any waiver that may be deemed necessary.
- vii. Each party maintains their right to advocate their views regarding what is required to comply with the personal contact requirements of 52 Pa. Code §§56.94 and 56.336 and nothing herein is intended to imply that PWSA's interim process is or is not in compliance with these requirements or that PWSA is forgoing its right to seek a waiver of the requirements.

b. Collections Plan

- i. PWSA will elicit the help of BCS/Commission staff to gather information about the best practices collections policies and procedures at other Pennsylvania utilities in an effort to inform its own processes.
- ii. PWSA agrees to provide the following information during the Stage 2 Collaborative Workshop addressing collections issues:
  - a) Identification of any current or planned use of a third party collections agency, the role of the third party, and any fees or charges that may be assessed to PWSA or to an individual consumer pursuant to a third party collections arrangement; and,
  - b) A description of how PWSA plans to address arrearages previously transferred to Jordan Tax Service ("JTS") for collections.
- iii. In advance of the Stage 2 litigation, PWSA agrees to provide the parties with a status update of these issues.

3. In advance of the Stage 2 litigation, PWSA agrees to provide the parties with the following information (in writing):
  - a. A chronological description of PWSA's current termination procedure.
  - b. An update regarding the status of its collection plan to include the issues identified in Section III.MM.1.c above.
  - c. An update regarding PWSA's policies and procedures with regard to a tenant's ability to establish and maintain service pursuant to the Discontinuance of Service to Leased Premises Act.

**NN. PWSA Low-Income Customer Assistance Program**

1. PWSA Affordability Analysis
  - a. PWSA's Affordability Analysis was discussed at June 3, 2019 Low Income Advisory Council ("LIAAC") meeting and a follow-up Q&A session was held on July 15, 2019. The discussion was continued at the LIAAC meeting on August 12, 2019 and the fourth meeting is scheduled for September 23, 2019.
  - b. PWSA Exh. RAW/C-28(A) at Appendix D provided data collection pursuant to paragraph F.1 of the 2018 Rate Case Settlement (Docket No. R-2018-3002645). PWSA will continue to provide the data on a quarterly basis in PWSA's Compliance Plan Progress Reports.
2. LIAAC meetings were/will be held on a monthly basis in August, September, and October 2019 and will begin again on a quarterly basis in January 2020. The initial two year term of the LIAAC shall be extended through March 2026, subject to further extension at PWSA's discretion as established in paragraph F.3 of the 2018 Rate Case Settlement (Docket No. R-2018-3002645). Meeting dates and times for successive meetings will be scheduled at the end of each LIAAC meeting to best accommodate schedules. It is understood by all parties that LIAAC is an advisory group and that PWSA retains the final authority as to what recommendations made by the LIAAC will be adopted. By participating in LIAAC, no party waives its rights to advocate their positions in any pending or future Commission proceeding where such issues are addressed.
3. Input on PWSA CAP program from BCS and LIAAC members
  - a. PWSA will keep BCS informed of all scheduled LIAAC meetings intended to discuss its low income assistance programs, including its Bill Discount Program ("BDP"), Hardship Fund program, Community Environmental Program ("CEP"), and winter moratorium, and invite BCS

staff to participate.

- b. PWSA is currently in the process of developing a Low Income Assistance Program Plan pursuant to the Settlement terms in its 2018 Base Rate proceeding (Docket No. R-2018-3002645), which it intends to file as part of its next base rate proceeding. PWSA provided a preliminary overview of what is under consideration at its August LIAAC Meeting with a written draft of the Low Income Assistance Program Plan to be provided during the September LIAAC meeting. LIAAC members, BCS and all parties to this proceeding will be asked to provide written recommendations and feedback related thereto one week prior to the October LIAAC meeting for discussion during the October LIAAC meeting. PWSA will seriously consider all provided feedback and will, to the extent it agrees with the received feedback, incorporate such recommendations into its plan to be filed with the rate case. With its rate case filing, PWSA will provide its specific rationale for rejecting any programmatic recommendations offered as part of the LIAAC process.
4. Customer Outreach
    - a. PWSA will develop an outreach plan for its customer assistance programs, with the input of interested parties – including but not limited to Dollar Energy Fund and members of LIAAC.
    - b. PWSA will include its outreach plan as part of its Low Income Assistance Program Plan which will be filed as part of next base rate filing. The outreach plan will include, at a minimum, a proposed budget for outreach activities and a neighborhood canvassing aspect which will target areas of PWSA’s service territory identified through PWSA’s needs assessment.
    - c. PWSA welcomes the assistance of interested parties in developing and implementing its customer outreach plan.

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### **LEAD SERVICE LINE REMEDIATION**

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#### **OO. Definitions Of Terms As Relating To Lead Service Line Remediation Issues**

The following definitions apply to terms relating to Lead Service Line Remediation issues as set forth in Sections III.OO – III.YY:

1. “PWSA” means any PWSA officer, employee, contractor, agent, or other representative of PWSA.

2. "Service line" means the pipe or pipes that connects a water main to a building inlet, and any pigtail, gooseneck, or other fitting connected to the pipe or pipes.
3. "Public-side service line" means the portion of the service line on the street side of the curb box.
4. "Private-side service line" means the portion of the service line on the residence side of the curb box.
5. "Lead service line" refers to any service line made of lead, galvanized iron, or galvanized steel.
6. "Partial lead service line replacement" means the replacement of a public-side service line made of any material without the simultaneous replacement of a connected private-side lead service line.
7. "Private-side only lead service line" means a service line composed of lead on the private side and non-lead material on the public side.
8. "Full lead service line" means a service line composed of lead on both the public side and the private side.
9. "Customer Assistance Programs" means PWSA's Bill Discount Program, Hardship Fund program, Winter Shut Off Moratorium, Community Environmental Project, and any future programs created by PWSA to assist customers in paying for water service or securing access to safe drinking water.
10. The "lead action level" means the "action level" for lead as defined by 25 Pa. Code § 109.1102(a).
11. "Small-diameter water main replacement program" means PWSA's program for replacing small-diameter water mains and associated lead service lines between 2019 and 2026, as described in the Long-Term Infrastructure Improvement Plan (LTIIIP) on page 18 and Tables 2-7 and 2-8 on pages 28-29 (*See* PWSA Hearing Exh. No. 3).
12. "Neighborhood-based lead service line replacement program" means the program, described in part on pages 27-28 of the LTIIIP (PWSA Hearing Exh. No. 3), in which PWSA replaces all public-side lead service lines and eligible private-side lead service lines in work order areas.
13. "CLRAC" means the Community Lead Response Advisory Committee established pursuant to pages 9-13 of PWSA's Joint Petition for Settlement, and as approved by Final Order of the Pennsylvania Public Utility

Commission entered on February 7, 2019 in PWSA's first jurisdictional base rate case docketed at R-2018-3002645 et al.

**PP. Effective Dates of Terms Regarding Lead Service Line Remediation Issues.**

1. Unless specifically noted, the terms in this section will take effect on the date the Public Utility Commission issues an order approving the Settlement. Unless specifically noted, each term in this section will remain in effect until December 31, 2026.

**QQ. Inventory Regarding Lead Service Lines.**

1. PWSA is working with the University of Pittsburgh to develop a machine-learning model that will predict the material composition of public-side and private-side service lines, based on a model used in Flint, Michigan. PWSA will continue to collaborate with the University of Pittsburgh on this project.
  - a. After the model is peer-reviewed and quality assurance / quality control review is completed for its predictions of the locations of public- and private-side lead service lines, PWSA will use the data from the model predictions as part of the lead service line mapping on PWSA's website.
  - b. PWSA will publicize these updates by, at a minimum, issuing a press release once they are final.
  - c. After the machine-learning model generates predictions for the composition of all public- and private-side service lines and no later than March 31, 2020, PWSA will present to the CLRAC, for its information and advisory input, PWSA's plan for completing its inventory of service lines, including the steps PWSA will take to further investigate the composition of service lines based on the model's predictions.
2. PWSA's current goal is to complete the replacement of all lead service lines in its system by the end of 2026. For the purposes of this paragraph, "all lead service lines" means lines serving a residence (as defined in Section III.VV.1.a.i) of which PWSA is aware and are operationally feasible to replace as determined pursuant to Paragraph 3.3 PWSA Exh RAW/C-46 (PWSA Lead Service Line Replacement Policy Approved July 26, 2019), and, in the case of private-side lines, the owner authorizes the replacement or replaces the line in accordance with PWSA policy.
  - a. By December 31, 2020, PWSA will establish (and provide to the CLRAC, for its review and advisory input), an estimate of the number of private-side lead service lines connected to residential structures in PWSA's service area. PWSA will provide an update to this inventory on an annual

basis as described below in Section III.QQ.3.

- b. By March 31, 2021, PWSA will formulate a plan and timeline for removing the known public-side and private-side lead service lines connected to a residential structure that will not be replaced by PWSA's other lead service line replacement efforts, including the small-diameter water main replacement program. The plan will describe how PWSA will locate and replace the remaining known lead service lines in its system, identify a target date for replacing all lead service lines, and establish milestones for measuring progress towards replacement of all lead service lines by the target date.
  - c. If PWSA determines that it is not feasible to replace all lead service lines by December 31, 2026, the plan will identify a new target date and include an explanation as to why that new target date represents the earliest feasible date for replacing all lead service lines. The plan will be presented to the CLRAC for its review and advisory input. PWSA may revise the plan, including milestones and the target date for replacing all lead service lines, as needed as new information becomes available. Any such revisions will be presented and explained to the CLRAC for its review and advisory input. In evaluating the feasibility of its plan, PWSA will consider factors such as financial considerations, operational constraints, federal and state regulatory requirements and the results of its inventory.
  - d. The parties acknowledge that PWSA will not be able to replace:
    - i. private-side lead lines that a residential property owner refuses to allow PWSA to replace;
    - ii. lead service lines that are operationally infeasible to replace as determined pursuant to Paragraph 3.3 of PWSA Exh. RAW/C-46 (PWSA Lead Service Line Replacement Policy Approved July 26, 2019); and,
    - iii. lines that PWSA is unable to identify as lead service lines.
3. By September 30, 2019 and each year thereafter until September 30, 2026, PWSA will create (and present to the CLRAC, for review and advisory input) a plan describing the areas where the small-diameter water main replacements will occur in 2021 and each year thereafter.
- a. The plan will include an inventory update detailing the number and location of lead service lines replaced the preceding year, the mileage of small diameter water main replacements (and number of associated lead service line replacements) occurring in Priority Lead Neighborhoods (infra Section III.VV.2.a), the total mileage of small diameter water mains and



number of lead service lines anticipated to be removed in the existing and following year, and the number and location of lead service lines remaining.

- b. For the September 2022 update and each year thereafter until the September 2026 update if PWSA did not replace 10 miles of small diameter water main in Priority Lead Neighborhoods in the preceding year, *see* Section III.VV.2.a, the inventory update will explain the factors that prevented PWSA from doing so.
- c. The inventory update will also explain how PWSA plans to address those factors and endeavor to the maximum extent possible to replace at least 10 miles of small diameter water main in Priority Lead Neighborhoods in the existing and following year.

**RR. Interior Plumbing Inspections.**

1. Whenever PWSA replaces a residential water meter, PWSA will inspect the interior plumbing adjacent to the water meter and inform residents in writing of the materials observed. If the interior plumbing is composed of galvanized steel or iron, PWSA will inform customers of the risks of lead release from such plumbing.
2. Whenever PWSA performs a private-side lead service line replacement without a simultaneous meter replacement, PWSA will make good faith efforts to document the material making up the interior plumbing adjacent to the private-side lead service line and inform residents in writing of the materials observed. If the interior plumbing is composed of galvanized steel or iron, PWSA will inform customers of the risks of lead release from such plumbing.

**SS. Meter Replacements And Processes Related To Potential Lead Service Lines.**

1. Starting September 1, 2019 and ending three months thereafter, PWSA will provide, at no charge, a tap water lead testing kit, whenever PWSA replaces a water meter at a residence that has a private-side lead or galvanized service line or lead-bearing or galvanized interior plumbing adjacent to the water meter.
2. Starting September 1, 2019, PWSA will conduct a three-month study to determine the potential impact of replacing a water meter at locations with a lead service line or adjacent lead-bearing or galvanized interior plumbing.

3. By January 31, 2020, PWSA will present CLRAC with the results of the samples received pursuant to Section III.SS.1 to demonstrate potential impacts, for CLRAC's information and to solicit feedback.
  - a. If more than ten percent of the results received exceed ten parts per billion of lead, PWSA will provide a water filter NSF-certified to remove lead, six months of filter cartridges, and written information on how to request a free tap water lead testing kit whenever PWSA replaces a water meter at a residence that has a private-side lead or galvanized service line or lead-bearing or galvanized interior plumbing adjacent to the water meter.
  - b. PWSA will start providing the water filters NSF-certified to remove lead and the filter cartridges as soon as PWSA has evaluated the results of the study and determined that more than ten percent of the results received exceed ten parts per billion of lead.
4. PWSA will ensure that a new meter installed at any residence is "lead free," as defined at 42 U.S.C. § 300g-6(d).

**TT. Tap Water Testing and Filter Distribution.**

1. PWSA will provide, at no charge, a tap water lead testing kit to any resident within its service area who requests one and any resident within its service area who receives a meter replacement pursuant to Section III.SS.1.
  - a. If such testing reveals lead levels above ten parts per billion, PWSA will provide to the resident, at no charge, a water filter NSF-certified to remove lead, six months of filter cartridges, and an additional tap water lead testing kit with instructions to return a follow-up test result three months after the initial test.
  - b. So long as the resident continues to return testing kits, PWSA will continue to provide additional testing kits at three-month intervals and additional filter cartridges at six-month intervals until the resident's lead levels fall below ten parts per billion.
  - c. PWSA will include information on this filter distribution policy in all materials publicizing the availability of tap water lead testing kits.
2. PWSA will offer, at no charge, a water filter NSF-certified to remove lead and six months of filter cartridges to any customer enrolled for PWSA's Customer Assistance Programs and any tenant that would be eligible for PWSA's Customer Assistance Programs if they were a customer, when PWSA's records (including predictions from the machine-learning model described

above in Section III.QQ.1) indicate that the customer's or tenant's residence has a public-side or private-side service line made of lead or unknown material. This term will remain in effect until PWSA's Lead and Copper Rule sampling results fall below the lead action level during two consecutive six-month monitoring periods.

3. PWSA will continue to provide, at no charge, a tap water lead testing kit, water filter NSF-certified to remove lead, and six months of filter cartridges to a residence whenever PWSA performs a partial lead service line replacement, full lead service line replacement, or private-side only lead service line replacement.
  - a. PWSA will provide residents who receive partial lead service line replacements with information regarding the risks of lead exposure from partial lead service line replacements.
  - b. If a resident's post-replacement tap water lead test reveals lead levels above ten parts per billion, PWSA will provide to the resident an additional testing kit, at no charge, and instructions to return a follow-up test result three months after the initial test.
  - c. If the three-month follow-up test result shows lead levels above ten parts per billion, PWSA will assist the resident in determining why lead levels remain elevated.

**UU. Bottled Water and Flushing Assistance.**

1. If a residence's tap water lead test reveals lead concentrations above 50 parts per billion, PWSA will deliver to the residence at least one case of bottled water per day until PWSA completes a meter drop and flush at the residence. Residents who receive a meter drop and flush will remain eligible for additional filter cartridges and other assistance as described above in Sections III.TT.1 and III.TT.3.

**VV. Lead Service Line Replacement.**

1. General terms
  - a. PWSA will offer to replace a private-side lead service line at no direct cost to the property owner:
    - i. At any residence where PWSA replaces a public-side service line connected to a private-side lead service line; and

- ii. At any residence with a private-side only lead service line located within a work order area of a neighborhood-based lead service line replacement program where lead service line replacements are performed after completion of the 2019 Lead Service Line Replacement program which is currently scheduled to be completed by September 2020.
- b. PWSA will not perform a partial lead service line replacement unless:
  - i. PWSA determines that the conditions set forth in Paragraph 3.3 of PWSA Exh. RAW/C-46 (PWSA Lead Service Line Replacement Policy Approved July 26, 2019) (including technical infeasibility, unsafe structural or sanitary conditions, or excessive cost) apply;
  - ii. PWSA is replacing a public-side service line through the small-diameter water main replacement program or is moving a residential service line from an abandoned water main to a different water main, and PWSA is unable to obtain consent to replace the private-side lead service line from the property owner after making at least one attempt to contact the property owner by mail, one attempt by telephone, and one attempt by visiting the residence in person;
  - iii. A property owner who also resides at the property signs a formal agreement stating that they do not consent to a free private-side lead service line replacement and that they understand the risks of a partial replacement; or
  - iv. PWSA is replacing a public-side service line as a result of an emergency circumstance (e.g., water main leak, broken curb stop, or damage to other infrastructure requiring a public-side service line replacement), and PWSA is unable to obtain consent to replace the private-side lead service line from the property owner after making at least one attempt to contact the property owner by telephone and one attempt by visiting the residence in person.
- c. PWSA will make a good faith effort to identify additional funding sources other than rates for lead service line replacements, including but not limited to low or no cost funding opportunities, such as loans and grants. PWSA will request funding from these sources if appropriate and reasonable. This commitment will continue for the duration of the replacement program for lead service lines.
- d. Prior to conducting a private-side lead service line replacement, PWSA will provide the property owner with information about the property damage that might occur during the replacement and will describe the

restoration that PWSA will perform.

2. Small-diameter water main replacement program
  - a. Starting January 1, 2021, PWSA will endeavor, to the maximum extent possible and consistent with balancing its other regulatory, infrastructure and consumer obligations and priorities, to replace at least ten miles per year of small-diameter water main in Priority Lead Neighborhoods.
    - i. No later than July 1, 2020, PWSA, in consultation with the CLRAC, will designate the census tracts or other appropriate geographic units in its service area that constitute Priority Lead Neighborhoods.
    - ii. The designation of Priority Lead Neighborhoods will consider children's blood lead levels, the prevalence of children under six years of age and women of child bearing age, income, lead service line density, or any combination of lead-related or public health-related factors recommended by the CLRAC.
3. Neighborhood-based lead service line replacement program
  - a. For any future neighborhood-based lead service line replacement program:
    - i. PWSA will prioritize neighborhood-based lead service line replacement program work orders according to factors identified in consultation with the CLRAC, including but not necessarily limited to, children's blood lead levels, the prevalence of children under six years of age and women of child bearing age, income, and lead service line density.
    - ii. PWSA will try to obtain a property owner's consent for a private-side lead service line replacement by making at least one attempt to contact the property owner by mail, one attempt by telephone, and one attempt by visiting the residence in person.

**WW. Community Lead Response Advisory Committee (CLRAC).**

1. The term of the CLRAC is extended through December 31, 2026, unless active CLRAC members vote unanimously to terminate the CLRAC at an earlier date.
2. Notwithstanding Section III.WW.1, PWSA may terminate the CLRAC after January 1, 2022, if there are just and reasonable circumstances for its termination, including insufficient participation and/or engagement in the CLRAC. Termination of the CLRAC will be effective 120 days after notice is provided by PWSA to CLRAC members.

3. If a CLRAC member is no longer willing or able to continue to participate in the CLRAC, another representative of the departing member's organization may fill the departing member's position on the CLRAC. If no other representative of the departing member's organization is willing or able to fill the departing member's position, PWSA or any member of the CLRAC, including the departing member, can nominate a candidate to fill the departing member's position. At least one active committee member must be a public health expert. Candidates must be approved by two-thirds of current CLRAC members.
4. PWSA will consult with the CLRAC regarding its lead remediation efforts on at least a quarterly basis. PWSA's consultation will include, but not be limited to:
  - a. Prioritization of residences for lead service line replacements based on children's blood lead levels, the prevalence of children under six years of age and women of child bearing age, income, lead service line density, or any combination of factors recommended by the CLRAC, as part of:
    - i. Small-diameter water main replacements performed after January 1, 2021, including designation of Priority Lead Neighborhoods, as described above at Section III.VV.2.a; and
    - ii. The neighborhood-based lead service line replacement program, as described above at Section III.VV.3.
  - b. An update every six months on the number of instances in which PWSA has been unable to replace a private-side lead service line because of the conditions set forth in Section III.VV.1.b.
  - c. An analysis of the costs incurred by customers seeking reimbursements for private-side lead service line replacements under Paragraph 3.2 of PWSA Exh. RAW/C-46 (PWSA Lead Service Line Replacement Policy Approved July 26, 2019), for CLRAC's information and to solicit feedback;
  - d. A quarterly update on PWSA's efforts to secure additional funding for lead service line replacements as described above at Section III.VV.1.c.;
  - e. Implementation of PWSA's water filter policies, including methods for reducing residents' burdens to obtain filters under the filter programs described above at Sections III.SS and III.TT;
  - f. Improving outreach efforts and exploring other methods for obtaining customer consent for private-side lead service line replacements conducted

as part of the small-diameter water main replacement program, neighborhood-based lead service line replacement program, in response to a main or service line leak or break, or through the Community Environmental Project. PWSA will continue to report quarterly to the CLRAC, for its information and to solicit feedback, on the number of property owners who refuse to consent to private-side lead service line replacements, the reasons for their refusal, and PWSA's follow-up efforts to obtain consent;

- g. PWSA's efforts to increase customer participation in its pre- and post-lead service line replacement and post-meter replacement tap water lead testing programs;
- h. Public display of the machine-learning model's predictions of the locations of private- and public-side lead service lines and PWSA's plans for completing its inventory, as described above at Section III.QQ.1;
- i. PWSA's plan for replacing all known remaining lead service lines, as described above at Section III.QQ.2;
- j. PWSA's estimate of the number of private-side lead service lines located in its service area, as described above at Section III.QQ.2; and
- k. The results of the information determined in Sections III.QQ.2 and III.QQ.3 above.

**XX. Corrosion Control (Orthophosphate Program).**

- 1. PWSA will provide the Commission, the Parties, and the CLRAC with quarterly updates regarding the progress of PWSA's orthophosphate program, when PWSA started testing for lead levels, and the results of the lead level testing.
- 2. PWSA's obligation to provide the quarterly updates set forth in this paragraph will cease when it is no longer required to provide quarterly updates on its orthophosphate program to the Pennsylvania Department of Environmental Protection.

**YY. Rate Treatment Regarding Lead Service Line Replacement Costs.**

- 1. PWSA will separately identify all projected lead service line replacement costs and details on its cost projections in its rate filings.
- 2. PWSA will continue to provide information regarding actual replacement costs as part of its quarterly report provided to the parties pursuant to the Rate

Case Settlement Par. A.2.c. (Docket Number R-2018-3002645) that includes quarterly and cumulative year-to-date data. This reporting requirement will continue through the term of the lead service line replacement program.

Actual replacement costs will be evaluated in future base rate proceedings and shared with the CLRAC.

3. When PWSA adopts the Uniform System of Accounts, it will show projected and actual lead service line replacement costs as a sub account; PWSA will determine whether it would be appropriate to include in a sub account of Account 333.

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**PWSA COMPLIANCE PLAN PROGRESS REPORTS AND  
PWSA SUPPLEMENTAL TESTIMONY/EXHIBITS IN SUPPORT OF PARTIAL  
SETTLEMENT**

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**ZZ. PWSA Compliance Plan Progress Reports**

1. PWSA included with its supplemental testimony of August 2, 2018 a Second Compliance Plan Program Report, marked as PWSA Exh. RAW/C-28(A), with information available through July 31, 2019.
2. On a quarterly basis starting on or before October 31, 2019, PWSA will file an updated PWSA Compliance Plan Progress Report in a format substantially similar to PWSA Exhibit RAW/C-28.
3. Subsequent PWSA Compliance Plan Progress Reports shall be filed on or before January 30, April 30, July 30, and October 31. The Compliance Plan Progress Reports shall be filed through October 31, 2025 unless the date is otherwise extended by the Commission or through mutual agreement with the parties.
4. In addition to the information already presented in PWSA Exhibit RAW/C-28, the Compliance Plan Progress Report will include updates regarding the following items as agreed-to herein beginning with the October 31, 2019 Compliance Plan Program Report (unless otherwise noted):

Description	Cross Reference	Frequency of Information Update
Conversion of accounting to full NARUC USOA	Partial Settlement at Section III.A.2	Quarterly
Status of Risk and Resilience Assessment and Updated Emergency Response Plan	Partial Settlement at Section III.D.5	Quarterly, until completed.
Security Planning and Readiness Plans	Partial Settlement at Section III.E.3.b.	Quarterly, until completed.



Notices Regarding Accident, Death, Service Interruptions/Outage, Physical or Cyber Attack and low pressure incidents required to be reported to DEP	Partial Settlement at Section III.F.1.b (to be included in final Emergency Response Plan)	Quarterly, until completed.
Metering of Unmetered Properties	Partial Settlement at Section III.G.1.b.ii.	Quarterly, when completed all newly metered and/or previously unbilled properties to be identified
Water Conservation Measures	Partial Settlement at Section III.K.3	Quarterly, until completed
Replacement of 4-Inch Diameter Water Mains	Partial Settlement at Section III.L.2	Quarterly
PWSA Leak Detection Program	Partial Settlement at Section III.N.1.e	Annually
Status of Investigation Regarding Ownership of Wastewater Laterals	Partial Settlement at Section III.Z.3.	Quarterly, until January 15, 2021 when final report to be shared with the parties.
Construction Project Tracking and Evaluation	Partial Settlement at Section III.CC	Quarterly, (with starting date to be mutually agreed upon by I&E and PWSA)
Report of Non-Competitively Bid Construction Contracts	Partial Settlement at Section III.DD.1.c	Annually
Design Engineer and Company Affiliation for Capital Projects	Partial Settlement at Section III.DD.2	Quarterly
Funding Sources for Capital Projects	Partial Settlement at Section III.EE.2	Quarterly
Material Report, Valves, Prioritization	Partial Settlement at Section III.GG.1 & 2.	When available
Computerized Maintenance Management System (CMMS) Implementation Progress	Partial Settlement at Section III.GG.3	Quarterly, until completed
Data regarding PWSA's Interim Process Regarding Personal Contact Requirements of 52 Pa. Code §§56.94 and 56.336	Partial Settlement at Section III.MM.2.a.iii	Quarterly, beginning with PWSA Exh. RAW/C-28(A)
Customer Assistance Program Data Collected Pursuant to PWSA Rate Case Settlement (Docket No. R-2018-3002645)	Partial Settlement at Section III.NN.1.b	Quarterly, beginning with PWSA Exh. RAW/C-28(A)
Update on Orthophosphate Program	Partial Settlement at Section III.XX.1	Quarterly, until no longer required to provide updates to Pennsylvania Department of Environmental Protection

### **AAA. Compliance Deadlines**

1. As set forth herein, PWSA will report its progress in meeting the timelines agreed-to herein as part of the PWSA Compliance Plan Progress Reports.
2. If circumstances arise that forestall PWSA from meeting an agreed-to deadline for a specific task, PWSA agrees to provide that notice in the PWSA Compliance Plan Progress Reports. This notice will include:

- a. Details as to why the agree-to compliance deadline target is no longer possible;
- b. The new timeline for compliance; and,
- c. Explanation of the steps to be taken to accommodate the new deadline.

### **BBB. PWSA Supplemental Testimony**

1. PWSA's Supplemental Direct Testimony served on August 2, 2018 and admitted into the record on August 21, 2019 included the following information in support of this Partial Settlement:

Issue	Information Provided	Location of Information	Partial Settlement Cross Reference
Unscheduled/Emergency Service Disruptions and Low Pressure Incidents Required to be Reported to DEP	SOP for Reporting Low Pressure Readings, Breaks, and Boil Water Advisories	PWSA Exh. RAW/C-41 PWSA Exh. RAW/C-42	Partial Settlement at Section III.F.2
Identifying Unmetered/Unbilled Properties	Buchart Horn Proposal for 2019 Unmetered & Flat Rate Property Evaluation Project dated April 17, 2019 which details the current process for identifying these properties.	PWSA Exh. RAW/C-37	Partial Settlement at Section III.G.1
Status of Metering Plan	May 29, 2019 Metering Presentation	PWSA Exh. RAW/C-38	Partial Settlement at Section III.J.5
PWSA Water Distribution System Master Plan	Water Distribution System Master Plan Scope of Work and Draft Table of Contents	PWSA St. C-1SD (Weimar) pp 10-11 PWSA Exh. RAW/C-36	Partial Settlement at Section III.L.1
Leak Detection Program	Additional detail about program, to-date results, details regarding prioritization for larger transmission pipes	PWSA St. C-1SD (Weimar) pp 15-16 PWSA Exh. RAW/C-39	Partial Settlement at Section III.N.1.b
Source of Supply Measurement	System Flow Meter Operation Status	PWSA Exh. RAW/C-40	Partial Settlement at Section III.O.5
City Cooperation Agreement	Status update regarding negotiations of new Cooperation Agreement and any extensions of pre-existing agreement	PWSA St. C-2SD (Lestitian) pp 3-6	Partial Settlement at Section III.P
Pennsylvania American Water Company Contract	Status update regarding discount provided to PAWC customers	PWSA St. C-2SD (Lestitian) pp 6-7	Partial Settlement at Section III.T

Residential Fire Protection and Standby Charges	Status update to remove and credit or refund residential customers assessed and pro forma tariff supplement.	PWSA St. C-4SD (Quigley) pp 2-3 PWSA Exh. JAQ/C-17	Partial Settlement at Section III.X
Engineer and Company Affiliation for Projects	PWSA Project Operators for Open and Active Projects	PWSA Exh. RAW/C-34	Partial Settlement at Section III.DD.2
Updated Open and Active Project Information		Updated PWSA Exhibit RAW/C-10	Partial Settlement at Section II.EE.1
Designation of High Priority Projects	PWSA Board Resolution 91 adopted May 16, 2019	PWSA Exh. RAW/C-35	Partial Settlement at Section III.FF.2
Clearwell Improvements Projects	Consent Order and Agreement with Department of Environmental Protection (if available)	PWSA Hearing Exh. No. 6 (Final Consent Order Still Pending)	Partial Settlement at Section III.FF.4
Construction Coordination with Other Utilities and Municipalities	Details of Smallman Street project	PWSA St. C-1SD (Weimar) p 22	Partial Settlement at Section III.KK
PWSA Compliance Plan Progress Reports	Updated PWSA Exhibit RAW/C-28 with information through July 30, 2019	PWSA Exh. RAW/C-28(A)	Partial Settlement at Section III.ZZ

2. PWSA's Supplemental Direct Testimony served on August 2, 2018 and admitted into the record on August 21, 2019 included the following document as requested by Commission Staff:

Reference	Description	Location of Information	Partial Settlement Cross Reference
Directed Question Number 1.11	Exhibit RAW/C-33: PWSA Letter to DEP Nov 20 2017 in Response to Oct 25 2017 DEP Administrative Order	PWSA Exh. RAW/C-33	Partial Settlement III.AA.2

### **CCC. Amended LTIP**

1. PWSA's Supplemental Direct Testimony served on August 2, 2018 and admitted into the record on August 21, 2019 included the following additional information to be included in the LTIP:

Issue	Information to be Provided	Location of Information	Cross Reference
Workforce Development	Incorporate information regarding workforce challenges and efforts to build workforce to meet needs	PWSA Exh. RAW/C-43	Partial Settlement at Section III.JJ
Construction Coordination with Other Utilities and Municipalities	Incorporate information about utilization of resources to meet increased need for coordination and plan with City regarding hiring of additional engineering staff	PWSA St. C-1SD (Weimar) p 22 PWSA Exh. RAW/C-43	Partial Settlement at Section II.KK

2. PWSA Hearing Exh. No. 3 admitted into the record on August 21, 2019 is PWSA's 5-Year Long-Term Infrastructure Improvement Plan dated August 21, 2019 which incorporates the revised LTIIIP pages from PWSA Exh. RAW/C-43.

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## DOCUMENTS TO BE FILED UPON FINAL COMMISSION ORDER

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### **DDD. Updated Compliance Plan For Stage 1 Issues**

1. For the topics address in this Stage 1 process, the Updated Compliance Plan to be filed within 30 days of the Commission's Final Order will supersede both the Compliance Plan initially filed on September 28, 2018 and the Compliance Plan Supplement filed on February 1, 2019.

### **EEE. Supplemental Tariff Pages**

2. PWSA shall incorporate any tariff changes as needed to be in compliance with the Commission's Final Order in this proceeding.

## **V. DISCUSSION**

### **A. 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>16</sup> Therefore, the Commission has jurisdiction over the provision of water and wastewater<sup>17</sup> service by PWSA.<sup>18</sup>

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<sup>16</sup> 66 Pa.C.S. § 3202(a)(1).

<sup>17</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>18</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

Chapter 32 requires 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>[19]</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>20</sup> Thus, approval of the Compliance Plan is appropriate if it will ensure adequate, efficient, safe, reliable and reasonable service.

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>[21]</sup>

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Implementation Order (FIO) entered March 15, 2018, p. 5. Please note that storm water issues are reserved for Stage 2 of this proceeding. See the November Secretarial Letter.

<sup>19</sup> 66 Pa.C.S. § 3204(b).

<sup>20</sup> 66 Pa.C.S. § 3204(c).

<sup>21</sup> 66 Pa.C.S. § 332(a).

For actions before the Commission, the burden of proof is a “preponderance of the evidence” standard.<sup>22</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>23</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>24</sup> The burden of persuasion determines which party must produce sufficient evidence to demonstrate that it is entitled to a favorable ruling.<sup>25</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>26</sup> A party that offers a proposal not included in the original filing bears the burden of proof for that proposal.<sup>27</sup>

As such, as the proponent of its Compliance Plan and LTIP filing, PWSA 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 bears the burden in those cases to demonstrate that its proposal(s) will result in PWSA providing adequate, efficient, safe, reliable and reasonable service.

The Commission encourages parties in contested on-the-record proceedings to settle cases. *See*, 52 Pa.Code § 5.231. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s

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<sup>22</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*, 279 A.2d 356, 359 (Pa.Cmwlth. 1971).

<sup>23</sup> *See Se-Ling Hosiery v. Margulies*, 70 A.2d 854, 855 (Pa. 1950).

<sup>24</sup> *See In re Loudenslager’s Estate*, 240 A.2d 477, 482 (Pa. 1968).

<sup>25</sup> *Reidel v. County of Allegheny*, 633 A.2d 1325, 1329 n.11 (Pa.Cmwlth. 1993).

<sup>26</sup> *Id.*

<sup>27</sup> *See Brockway Glass Co. v. Pub. Util. Comm’n*, 437 A.2d 1067 (Pa.Cmwlth. 1981); *Pub. Util. Comm’n v. Duquesne Light Company*, Docket Nos. R-2013-2372129, *et al.*, Opinion and Order (April 23, 2014).

decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a “settlement” reflects a compromise of the parties’ positions, which arguably fosters and promotes the public interest. When parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

## **B. Public Interest Analysis of Partial Settlement**

The Partial Settlement was achieved by the Joint Petitioners after an extensive investigation of PWSA’s filings to include the Stage 1 issues identified in the Compliance Plan, Supplement to the Compliance Plan and the LTIIP. The Joint Petitioners engaged in extensive informal and formal discovery and numerous settlement discussions. They also carefully reviewed and considered the direct, rebuttal, surrebuttal, supplemental direct, supplemental rebuttal, and rejoinder testimony (to include all the supporting exhibits) filed by many of the Joint Petitioners.

On September 30, 2019, the Joint Petitioners filed their statements in support setting forth the bases upon which each of them believes that the Partial Settlement and the Compliance Terms are in the public interest and should be approved.

In the Partial Settlement, the Joint Petitioners submit that the Partial Settlement is in the public interest for the following additional reasons:

- (a) **The Partial Settlement Provides A Reasonable Resolution.** The Partial Settlement represents a balanced compromise of all of the active parties in this proceeding and is a reasonable resolution of the Stage 1 issues set forth in PWSA’s proposed Compliance Plan, Supplement to the Compliance Plan and Long Term Infrastructure Investment Plan.

(b) **Substantial Litigation And Associated Costs Will Be Avoided.** The Partial Settlement amicably and expeditiously resolves a substantial number of issues permitting PWSA to move forward in its transition to Commission jurisdiction while creating a path forward for the Commission to resolve the remaining issues upon which the parties were unable to reach agreement. Given the complexity of this proceeding in light of PWSA's transition to Commission jurisdiction, the parties submit that the approach as agreed to herein to address each of the issues as raised in this proceeding is just and reasonable, and in the public interest.

(c) **The Partial Settlement Is Consistent With Commission Policies Promoting Negotiated Settlements.** The Joint Petitioners arrived at the Partial Settlement, after conducting extensive discovery and numerous in-depth discussions. The Partial Settlement constitutes reasonably negotiated compromises on the issues addressed. Thus, the Partial Settlement is consistent with the Commission's rules and practices encouraging settlements, 52 Pa.Code §§ 5.231, 69.391, 69.401-69.406, and is supported by a substantial record.

Partial Settlement, p. 59.

## **1. PWSA's Position – Public Interest**

The Compliance Plan self-identifies areas where changes or improvements are needed to bring PWSA's existing operations and procedures into compliance with the applicable requirements of the Commission. It also, together with the LTIIP, presents proposals to implement such changes and improvements. Areas of inquiry, additional issues and/or alternative proposals regarding compliance and/or the LTIIP were highlighted by the Commission's Staff,<sup>28</sup> PWSA's rate proceeding,<sup>29</sup> and the other active parties to these proceedings. PWSA St. in Support, p. 1.

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<sup>28</sup> On November 28, 2018, the Commission issued a Corrected Secretarial Letter ("November Secretarial Letter") and the accompanying Technical Staff Initial Report and Directed Questions – Stage 1 ("Stage 1 Initial Report"), which lists a variety of specific questions that PWSA and the parties were directed to address as part of the Stage 1 litigation. For ease of reference, Exhibit RAW/C-1 reprinted the Commission's questions and sequentially numbers them. The Partial Settlement refers to Directed Questions by the numbering shown in Exhibit RAW/C-1.

<sup>29</sup> As part of the Commission-approved settlement ("Rate Settlement") in PWSA's July 2, 2018 base rate increase filing at Docket Nos. R-2018-3002645 (Water) and R-2018-3002647 (Wastewater), PWSA agreed that certain issues would be investigated as part of this consolidated proceeding.



PWSA points out that the Partial Settlement is supported by all of the active parties.<sup>30</sup> Overall, the Partial Settlement, if approved, expressly resolves a majority (75%)<sup>31</sup> of the issues among the Joint Petitioners. The Partial Settlement was reached after considerable review of PWSA's operations through a substantial amount of formal<sup>32</sup> and informal discovery, the submission of extensive testimony by the active parties,<sup>33</sup> and after a series of negotiations and discussions concerning all of the issues raised by PWSA's Compliance Plan and LTIP, including plans to enhance and modernize PWSA's infrastructure, compliance with Commission rules and regulations and PWSA's plans to address lead levels in its water supply and the replacement of lead service lines. PWSA concludes that the Partial Settlement, therefore, represents a reasonable accepted resolution to virtually all of these issues (a handful of issues were reserved for litigation). PWSA St. in Support, pp. 2-3.

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<sup>30</sup> Please note that not every issue was of equal concern to every Joint Petitioner. Accordingly, each of the Joint Petitioners' statements in support does not necessarily address each and every aspect of the Partial Settlement. The inactive parties as well as commenters regarding the Commission's implementation orders (described in Paragraph 28 of the Joint Petition) did not file testimony and did not otherwise actively participate in this proceeding.

<sup>31</sup> By its terms, the Partial Settlement presents a resolution for 74.73% of the issues between the Joint Petitioners. As set forth on Exhibit 1 (Checklist) of the Joint Petition, the Joint Petitioners identified a total of 186 discrete issues involved in this proceeding. Agreement was reached on 139 issues. The Exhibit (Checklist) also shows that 25 issues are deferred to future proceedings (including those issues the Commission has already moved to Stage 2) and 18 issues were reserved for litigation. An additional 4 issues were no longer open due to either the passage of time and/or the resolution of other related matters. The total number of agreed-upon issues (139) divided by the total number of issues (186), multiplied by 100, equals 74.73%.

<sup>32</sup> PWSA responded to 700 interrogatories (including subparts) from the other active parties. In addition, PWSA responded to 42 data requests (including subparts) from the Bureau of Technical Utility Services (TUS).

<sup>33</sup> The active parties submitted 7 rounds of written testimony. [1] On February 14, 2019, PWSA served its written direct testimony and exhibits. [2] Written direct testimony and accompanying exhibits, if any, were served by I&E, OCA, OSBA, Pittsburgh UNITED, and PAWC on April 5, 2019. [3] On May 6, 2019, PWSA, OCA, OSBA, and PAWC served their written rebuttal testimony and accompanying exhibits, if any. [4] On May 17, 2019, I&E, OCA, OSBA and Pittsburgh UNITED served their written surrebuttal testimony and accompanying exhibits, if any. Consistent with the extended litigation schedule, [5] PWSA written supplemental direct testimony and exhibits on August 2, 2019. OSBA also written supplemental direct testimony to which PWSA served its written supplemental rebuttal testimony on August 14, 2019. [6] On August 14, 2018, I&E, OCA, OSBA and Pittsburgh UNITED served their written supplemental rebuttal testimony and accompanying exhibits, if any. [7] On August 19, 2018, PWSA written supplemental rejoinder testimony.

The Joint Petitioners agree that both the Compliance Plan<sup>34</sup> and the LTIP<sup>35</sup> should be approved, subject to the terms and conditions of the Partial Settlement and subject to modifications – to the extent necessary – to take into account the resolution of the remaining “Litigation Issues.”<sup>36</sup> PWSA St. in Support, p. 3.

PWSA asserts that the Compliance Plan, as modified by the Partial Settlement and subject to the Litigation Issues, adequately ensures and maintains the provision of adequate, efficient, safe, reliable and reasonable service to customers. It contains agreed-upon resolutions which create workable and viable paths for PWSA’s transition to full compliance. In addition, the Partial Settlement – if approved – resolves all of the issues among the Joint Petitioners regarding the LTIP proceeding. The LTIP will adequately ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service to customers. The Partial Settlement will approve the initial LTIP, which (a) shows the acceleration of the replacement of infrastructure by PWSA and (b) will enable PWSA to seek to implement a Distribution System Improvement Charge (DSIC). PWSA St. in Support, pp. 3-4.

According to PWSA, prioritization and the time provided to complete tasks are important aspects of any workable and viable path forward for PWSA to come into compliance with Commission regulations.<sup>37</sup> The transition to full compliance will be a process.<sup>38</sup> PWSA

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<sup>34</sup> The current version of the Compliance Plan is found at PWSA Hearing Exh. 1 and PWSA Hearing Exh. 2. During the course of the proceeding, the Compliance Plan (PWSA Hearing Exh. 1) was updated and supplemented (by PWSA Hearing Exh. 2) to reflect changed conditions.

<sup>35</sup> The current version of the LTIP is found at PWSA Hearing Exh. 3. During the course of the proceeding, the LTIP (as filed on September 28, 2018) was updated (PWSA Hearing Exh. 3).

<sup>36</sup> The “Litigation Issues” are stated in Section IV of the Partial Settlement. Please note that Section IV of the Partial Settlement consolidates and summarizes the 18 litigation issues shown on the Exhibit 1 (Checklist) to the Partial Settlement.

<sup>37</sup> PWSA Petition for Approval of Compliance Plan at ¶ 12, which states, in part: “The number and complexity of the areas in which improvement is required means that all areas will not be able to be addressed at once. Again, PWSA and the parties, with oversight and approval by the Commission will need to engage in a process of weighing the risks and benefits of addressing various compliance issues sooner rather than later. On that basis, a prioritization of the numerous compliance issues and their order of implementation will need to be developed in the course of the Compliance Plan proceeding.”

<sup>38</sup> PWSA St. No. C-1R (Weimar), p. 4.

has many issues that need a path forward not only to address a long history of system disinvestment but also to implement the difficult and time consuming steps needed to transition to full compliance. The hard reality is that PWSA is not able to simultaneously and immediately complete and finance all of the tasks required for full compliance with Commission regulations and continued compliance with the timelines mandated for capital improvement projects.<sup>39</sup> There is only a certain level of spending that PWSA will be able to sustain at current rates, along with additional just and reasonable rate increases.<sup>40</sup> PWSA's need to spend money on capital projects and/or Commission regulatory transitional efforts must be balanced against the requirement that PWSA's rates must be reasonable and not subject its ratepayers to "rate shock." PWSA St. in Support, p. 6.

PWSA asserts that the Compliance Plan, as modified by the Partial Settlement, contains agreed-upon resolutions which recognize these realities and create workable and viable paths for PWSA's transition to full compliance. In some instances, the path consists of a gradual movement towards full compliance.<sup>41</sup> In others, the path includes taking partial steps in order to complete all the tasks necessary for compliance at some later date.<sup>42</sup> According to PWSA, together these paths create a balance,<sup>43</sup> so that PWSA can increase its human capital, consultant or support resources to address the outstanding issues in a manner consistent with its ability to effectively manage the agreed upon compliance activities while maintaining its ability to meet its customer requirements and needs. PWSA St. in Support, pp. 6-7.

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<sup>39</sup> See PWSA St. No. C-1R (Weimar), pp. 4-6.

<sup>40</sup> PWSA St. No. C-1R (Weimar), p. 5. This point holds true even if PWSA seeks a rate increase. Any rate increase will only support a certain level of spending on capital projects and/or transitional efforts, since that increase must also be balanced against the requirement that PWSA's rates must be reasonable.

<sup>41</sup> See PWSA St. No. C-1R (Weimar), p. 4.

<sup>42</sup> See PWSA St. No. C-1R (Weimar), p. 4.

<sup>43</sup> Before any proposals in the Partial Settlement are changed or expedited, PWSA, the Parties and the PUC should try to agree on how any such modification changes the priorities or its funding abilities. PWSA St. No. C-1R (Weimar), p. 6.

When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. PWSA submits that the Partial Settlement clearly satisfies this standard. It provides plans for PWSA's compliance with scores of Commission regulations that are carefully crafted so that they can realistically be achieved by PWSA and acceptable to the advocates for the public interest. PWSA St. in Support, p. 4.

PWSA submits that the agreed-upon paths forward set forth in the Partial Settlement are reasonable given PWSA's current financial and operational conditions and represent a carefully balanced compromise of the interests of the Joint Petitioners. PWSA submits, therefore, that the Partial Settlement is in the public interest, just and reasonable, and supported by substantial evidence and should be approved without modification. Accordingly, for the reasons set forth in its statement in support and in the Partial Settlement, PWSA requests that the presiding officers and the Commission: 1) approve the Partial Settlement without modification; 2) resolve the Litigation Issues; and 3) permit PWSA to file a Compliance Tariff that includes the tariff supplement<sup>44</sup> annexed as Exhibit 2 to the Partial Settlement as well other revisions as needed to support implementation of the Commission's final order. PWSA St. in Support, p. 5.

## **2. I&E's Position – Public Interest**

I&E opines that this case exemplifies the need to protect the public interest, as PWSA's ability to ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service directly impacts each element of the public interest equation, which includes PWSA, its ratepayers, and the regulated community.<sup>45</sup> Specifically, (1) PWSA and its employees are both impacted by the challenges of PWSA's existing operations and the work necessary to transition its operations to compliance; (2) captive ratepayers are impacted because

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<sup>44</sup> PWSA Exh. JAQ/C-17.

<sup>45</sup> *Pa. Pub. Util. Comm'n v. Bell Atlantic-Pennsylvania, Inc.*, Docket Nos. R-00953409, *et al.*, 1995 Pa. PUC LEXIS 193 (Order entered September 29, 1995); I&E St. No. 1, p. 5.

they receive and pay for PWSA's service; and (3) the regulated community is impacted because it has an interest in ensuring that the Commission evenly and uniformly applies the Code, Commission regulations, orders, and rules to all jurisdictional Pennsylvania utilities, including PWSA. I&E St. in Support, pp. 6-7.

Due to the vast number of issues, I&E's approach to this complex and novel case required hundreds of hours investigating PWSA's Compliance Plan, along with its supporting documents and testimony, undertaking the discovery process, and submitting three rounds of its own testimony from four I&E expert witnesses. In an attempt to develop a comprehensive record, I&E's case attempted to include information responsive to the Commission's Directed Questions. In an effort to present the voluminous information necessary to support this case, I&E organized its testimony in a manner that for uniformity, adopted PWSA's numbering system, which is based upon PWSA's numbering of the Commission's Directed Questions.<sup>46</sup> Additionally, where I&E's testimony addressed topics included in the Directed Questions, I&E provided a corresponding reference to the question(s) at issue for ease of reference. I&E St. in Support, p. 7.

In recognition of the administrative hurdles that would result from attempting to determine whether each of the 186 issues raised<sup>47</sup> were resolved during the course of this proceeding or remained outstanding for litigation, I&E raised the prospect of parties creating a master list of issues for tracking purposes, which could be updated on dates tied to the litigation schedule.<sup>48</sup> During the Prehearing Conference on June 7, 2019, PWSA and the other parties agreed to this plan and it was approved.<sup>49</sup> I&E notes that the final tracking document entitled "Checklist Status of Issues" is incorporated as "Exhibit 1" to the Joint Petition, and I&E believes that parties' efforts in providing this tracking document will benefit the ALJs and the Commission in their review of the voluminous record. I&E St. in Support, p. 8.

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<sup>46</sup> PWSA Exhibit RAW/C-1.

<sup>47</sup> Partial Settlement, p. 16, ¶ 47.

<sup>48</sup> Hearing Tr., pp 26-29.

<sup>49</sup> *Id.*

From a wholistic view, I&E approached this case with the acknowledgment that that the plain language of Chapter 32 does not require that PWSA come into immediate compliance with the Code, Commission regulations, and orders. Instead, PWSA need only present a plan for compliance that will adequately ensure and maintain the provision of adequate, efficient, safe, reliable, and reasonable service. This distinction is important because I&E notes that PWSA's transition to Commission jurisdiction is a vast and complex undertaking that undoubtedly requires prioritization and devotion of resources and redevelopment of operations. During the unprecedented negotiation process that the parties undertook almost on a weekly basis from May through August 2019, PWSA witnesses, engineering experts, and counsel met with interested parties in efforts to understand PWSA's operational realities and the efforts it was making to transition to compliance. I&E attended and heavily participated in each of the sessions. I&E St. in Support, pp. 8-9.

I&E points out that the parties were able to resolve an estimated 75% of the 186 issues raised.<sup>50</sup> I&E notes that in some cases, the solutions discussed and ultimately adopted necessarily require PWSA to take a series of steps for implementation or are tied to a timeline that will not result in instant compliance. However, as reflected in the Partial Settlement, where adoption of a plan targeted to achieve future compliance represented PWSA's best available or only plausible course of action,<sup>51</sup> I&E did not reject the plan because it fell short of instant compliance, which is not required. Instead, I&E recognized the steps as being consistent with or promoting PWSA's ability to meet its obligation to ensure and maintain its provision of adequate, efficient, safe, reliable and reasonable service.<sup>52</sup> I&E St. in Support, p. 9.

I&E asserts the Partial Settlement is a reasonable resolution of the vast majority of issues raised by the Commission and parties for Stage 1 of PWSA's Compliance Plan

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<sup>50</sup> Partial Settlement, p. 47, ¶ 47.

<sup>51</sup> I&E notes that for the litigated issues not addressed through the Partial Settlement, these standards were not met.

<sup>52</sup> 66 Pa.C.S. § 3204(c).

proceeding. The terms are the product of multiple rounds of extensive testimony, and numerous in-depth settlement discussions held between the parties. The terms of the Partial Settlement include, but are not limited to, the parties' attempt to address issues raised through the Commission's Directed Questions. Only a few, discrete issues, remain for briefing. I&E St. in Support, p. 10.

According to I&E, bringing PWSA into compliance with the Code and Commission regulations, rules, and orders is an enormous undertaking. PWSA's first rate case presented numerous challenges. However, the scope of this proceeding is even greater, i.e., compliance of the largest combined water and sewer authority in Pennsylvania with the Code and Commission regulations, rules, and orders. As the sponsors of Chapter 32 recognized, the only precedent is in 1999, when similar legislation placed the nation's largest municipally owned natural gas distribution company, Philadelphia Gas Works, under the oversight of the PUC.<sup>53</sup> Given the need to prioritize the most important issues facing PWSA within Stage 1's procedural schedule, I&E is satisfied the Partial Settlement presents a reasonable roadmap to address many of the most challenging health and safety issues facing PWSA. With respect to areas for which immediate compliance could not be achieved, PWSA has undertaken a series of commitments to achieve compliance, and in many cases, agreed to provide updates by way of periodically-filed Compliance Plan Progress Reports.<sup>54</sup> I&E submits that the Partial Settlement meets the applicable standard of adequately ensuring and maintaining PWSA's provision of adequate, efficient, safe, reliable and reasonable service.<sup>55</sup> Accordingly, I&E fully supports this Partial Settlement, and avers its approval is in the public interest. I&E St. in Support, pp. 10-11.

### **3. OCA's Position – Public Interest**

OCA submits that the Partial Settlement is in the public interest and makes significant progress toward bringing PWSA into compliance with the Public Utility Code and

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<sup>53</sup> Reps. Turzai and Readhsaw, *Legislation to place the Pittsburgh Water and Sewer Authority under the oversight of the Public Utility Commission*, House Co-Sponsorship Memoranda (May 24, 2017).

<sup>54</sup> Partial Settlement, pp. 53-54., ¶¶ III(ZZ) (September 13, 2019).

<sup>55</sup> 66 Pa.C.S. § 3204(c).

Commission regulations and should be approved without modification. According to OCA, the terms and conditions of the Partial Settlement satisfactorily address many issues raised in OCA's analysis of the Authority's Compliance Plan and LTIP. OCA submits that this Partial Settlement, taken as a whole, is a reasonable compromise in consideration of likely litigation outcomes before the Commission. While the Partial Settlement does not reach all the recommendations proposed by OCA, OCA recognizes that the Partial Settlement is a product of compromise. Additionally, OCA recognizes that this matter is the first of two stages of PWSA's Compliance Plan proceeding, and the upcoming Stage 2 as well as future proceedings will make additional steps toward compliance with Commission regulations and applicable laws. The balance of compromises struck by the settling parties is critical to achieving settlement. Accordingly, OCA urges the Commission to consider the Partial Settlement as a whole. OCA submits that the Partial Settlement is in the public interest and the best interest of the Authority's ratepayers, and should be approved by the Commission without modification. OCA St. in Support, pp. 5-6.

#### **4. OSBA's Position – Public Interest**

OSBA actively participated in the extensive negotiations that led to the proposed partial settlement and is a signatory to the Partial Settlement. OSBA supports the Partial Settlement and requests approval of the Partial Settlement in its entirety.

According to OSBA, the Partial Settlement sets forth a comprehensive list of issues which were resolved through the negotiation process. The negotiation process in this case was particularly lengthy and involved, with the parties meeting regularly over the course of several weeks to discuss and work through the issues present in this case. OSBA concludes that the Partial Settlement is in the best interests of PWSA's small business customers. The Partial Settlement avoids the litigation of complex, competing proposals, and saves the possibly significant costs of protracted administrative proceedings. Such costs are not only borne by the Authority, but ultimately by PWSA's customers as well. Avoiding extensive litigation of this matter will serve judicial efficiency and will allow OSBA to more efficiently employ its resources in other areas. OSBA St. in Support, pp. 3-4.



## **5. Pittsburgh UNITED's Position – Public Interest**

Pittsburgh UNITED asserts that the proposed Partial Settlement strikes an appropriate balance of the parties' many and varied interests – resolving several important issues, significantly narrowing the issues for litigation, and deferring a number of issues for litigation to Stage 2 of this proceeding. Pittsburgh UNITED St. in Support, p. 2.

Pittsburgh UNITED made a concerted effort to conduct a thorough investigation and to create a detailed record in this proceeding of the issues it believed were relevant to the Commission's determination of whether PWSA's Compliance Plan and LTIP "adequately ensure and maintain the provision of adequate, efficient, safe, reliable, and reasonable service."<sup>56</sup> To that end, Pittsburgh UNITED submitted over 200 pages of written expert testimony from three subject matter experts, along with exhibits and supportive data and documentation, regarding customer service policies, practices, and procedures; low income customer assistance programs; and lead remediation issues, including the public health effects of lead exposure and the adequacy of PWSA's lead remediation programs.<sup>57</sup> This testimony documented, in substantial detail, the aspects of PWSA's policies and procedures that Pittsburgh UNITED asserts must be reformed in order for PWSA to come into compliance with all applicable laws and regulations governing public utilities. Pittsburgh UNITED St. in Support, pp. 2-3.

The proposed Partial Settlement resolves a number of the issues addressed in Pittsburgh UNITED's testimony. While Pittsburgh UNITED's positions were not fully adopted, and with the exception of those issues reserved for litigation, the resolution of the issues detailed in the Partial Settlement represents a fair and balanced approach that satisfies the many and varied interests at stake in a reasonable and just manner. Pittsburgh UNITED St. in Support, p. 3.

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<sup>56</sup> 66 Pa.C.S. §§ 3204(c), 1352(a)(7).

<sup>57</sup> See Pittsburgh UNITED Sts. C1 to C3; Sts. C-1SR to C-3SR; and Sts. C-1SUPP-R to C-3SUPP-R.

With respect to customer service issues, and consistent with the Commission's May Secretarial Letter, the Partial Settlement defers a number of customer service issues for litigation to Stage 2 of this proceeding.<sup>58</sup> This includes issues related to PWSA's termination policies and procedures, as well as PWSA's compliance with the tenant protections contained in Chapter 15 of the Public Utility Code, known as the Discontinuance of Service to Leased Premises Act (DSLPA). According to Pittsburgh UNITED, deferral of these issues to Stage 2 permits the parties to more fully engage in the workshop process led by the Commission's Bureau of Consumer Services (BCS), and will allow for a more holistic review of PWSA's residential billing, collections, and termination procedures as part of a single proceeding.<sup>59</sup> Pittsburgh UNITED St. in Support, pp. 3-4.

With respect to PWSA's low income assistance programs (which PWSA refers to collectively as its customer assistance programs),<sup>60</sup> the Partial Settlement establishes a process for additional informal review and input into the development of PWSA's Low Income Assistance Program Plan, which PWSA must file as part of its next base rate proceeding.<sup>61</sup> This additional review process will help to ensure that PWSA's programs are appropriately designed to achieve the overarching goals of universal service programming: that is, to enable low income consumers to afford water and wastewater service and, in turn, to reduce uncollectible expenses and terminations that result from a consumer's inability to pay. Pittsburgh UNITED St. in Support, p. 4.

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<sup>58</sup> May Secretarial Letter, p. 2.

<sup>59</sup> *Id.*

<sup>60</sup> Note that PWSA refers to *all* programs that provide services or assistance to low income customers as "Customer Assistance Programs." PWSA's Bill Discount Program (BDP) is most comparable to the Customer Assistance Programs provided by other regulated utilities, and is within PWSA's portfolio of Customer Assistance Programs – which also includes its Hardship Fund Program, Winter Moratorium, and Community Environmental Project.

<sup>61</sup> PWSA is required to file a comprehensive Low Income Assistance Program Plan as part of its next base rate case. *See* Recommended Decision, Docket Nos. R-2018-3002645, -3002647, p. 23, ¶¶ F.1 & F.3 (order entered Jan. 17, 2019) (hereinafter "Rate Case Settlement"); Opinion and Order, Docket Nos. R-2018-3002645, -3002647 (order entered Feb. 27, 2019) (approving the terms of the Rate Case Settlement).

With respect to lead remediation, the Partial Settlement contains several terms that will enhance the adequacy, reliability, and safety of PWSA's service. PWSA will develop a plan, in consultation with the Community Lead Response Advisory Committee, to find and replace all lead service lines in its system by 2026. PWSA will conduct lead service line replacements through its small-diameter water main replacement program in neighborhoods with the greatest vulnerability to lead exposure. PWSA will also continue its efforts to minimize harmful partial lead service line replacements and provide free tap water filters to the customers with the highest risk of lead exposure. The Partial Settlement builds on many of the provisions contained in the settlement of PWSA's rate case, approved by the Commission on February 7, 2019.<sup>62</sup> Pittsburgh UNITED St. in Support, pp. 4-5.

Pittsburgh UNITED concludes that the Partial Settlement is in the public interest and should be approved. Pittsburgh UNITED supports the entirety of the provisions in the Partial Settlement and urges the Commission to approve the Partial Settlement without modification. Pittsburgh UNITED St. in Support, p. 5.

## **6. Recommendation – Partial Settlement in the Public Interest**

The Commission encourages parties in contested on-the-record proceedings to settle cases. *See*, 52 Pa.Code § 5.231. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a "settlement" reflects a compromise of the parties' positions, which arguably fosters and promotes the public interest. When parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached

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<sup>62</sup> *See* Rate Case Settlement, pp. 11-17, ¶ III.C.1.

suits the public interest. *Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

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. Therefore, 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 Commission's Directed Questions were issued). PWSA M.B., p. 11.

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>63</sup> Implicit in this directive are the following: (1) PWSA is not currently "in compliance;" and, (2) PWSA needs a plan to come into compliance. PWSA M.B., pp. 24-25. The Partial Settlement is consistent with the directives of the statute because it sets forth a plan, or path by which PWSA will achieve compliance with respect to the settled issues.

The flexibility granted by the Legislature to the Commission in considering the complex issues presented by this compliance filing and the LTIIP 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>64</sup> Therefore, the Commission is not required to look at PWSA's Compliance Plan and determine whether its implementation will result in immediate compliance. PWSA M.B., p. 25. Rather, the focal point of inquiry is whether the Partial Settlement is a reasonable plan to achieve compliance in the future and therefore in the public interest. The undersigned ALJs believe that it is and therefore find the Partial Settlement to be in the public interest.

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<sup>63</sup> 66 Pa.C.S. § 3204(b).

<sup>64</sup> 66 Pa.C.S. § 3202(b).

The Joint Petitioners recognize that implementation of the Compliance Plan is an ongoing process. The Joint Petitioners included a provision in the Partial Settlement that requires PWSA to file quarterly Compliance Plan Progress Reports. Two such reports have already been filed by PWSA. In the Partial Settlement, PWSA agrees to provide detailed reports on a quarterly basis beginning October 31, 2019. Subsequent reports will be filed January 30, April 30, July 30 and October 31. The Partial Settlement requires these reports to be filed through October 31, 2025.

The reports will include the information set forth in the PWSA Compliance Plan Progress Report admitted in this proceeding as PWSA Exh. RAW/C-28. The information required in the reports includes an executive summary, and updates to Compliance Plan Supplemental Requirements and Compliance Plan Requirements for the following areas: Operations; Billing/Customer Service; Lead; Infrastructure; and, Finance, Contractual and Other Issues. The reports will include appendices that provide information regarding areas where PWSA believes it has come into compliance as well as updates regarding the following metrics: Operating Metrics Identified in I&E St. No. 4, p.5; Low Income Customer Billing Metrics; and Call Center Metrics.

The Partial Settlement also provides 18 additional subject areas that must be addressed in the quarterly reports. *See* Partial Settlement, p. 54. The undersigned ALJs believe these reporting requirements will assist PWSA, the parties and the Commission in bringing PWSA into compliance while at the same time monitoring progress.

The Partial Settlement also addresses the LTIP filing and the need for future amendments thereto. The undersigned ALJs conclude that the Partial Settlement provisions addressing the LTIP encompass PWSA's best and continued efforts to comply, which is consistent with PWSA's obligation to provide adequate, efficient, safe, reliable and reasonable service. These provisions are in the public interest.

Through the Partial Settlement, PWSA has committed to reporting critical infrastructure information which is necessary to inform its LTIP prioritization and to ensure the

safety and integrity of its operations. Specifically, PWSA has committed to (1) provide a comprehensive materials report and updated information about the types and sizes of valves once its GIS system is updated; (2) provide progress reports that include additional information regarding its prioritization of main and valve replacements, and (3) notify parties when its computerized maintenance management system (CMMS) project is implemented.<sup>65</sup> I&E St. in Support, p. 74.

PWSA's LTIIP is required to identify the types and ages of eligible property for which it will ultimately seek Distribution System Improvement Charge (DSIC) recovery, and it must also explain how replacement of aging infrastructure will be accelerated.<sup>66</sup> At the outset of this case, PWSA's Compliance Plan indicated that PWSA did not initially have a well-documented method of recordkeeping of maps showing the size, character, and location of each main and valve.<sup>67</sup> Additionally, the records that were available were not adequately portrayed in PWSA's Geographic Information Systems (GIS). I&E St. in Support, p. 74.

By way of the above commitments in the Partial Settlement, PWSA has proposed a plan to target the deficiencies identified in its Compliance Plan by providing reporting and updated information about the types and sizes of the valves in its system. Furthermore, PWSA has committed to report on the progress it makes in gaining information necessary to prioritize main replacements, and upon its progress in implementing a maintenance management system that will better target its resources to optimize efforts. I&E St. in Support, p. 75.

The Partial Settlement includes a term memorializing PWSA's commitment to, if determined necessary, amend its LTIIP once it is able to estimate the number of customer-owned lead service lines, and the expected expenditures for the replacement.<sup>68</sup> PWSA is under a

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<sup>65</sup> Partial Settlement, pp. 37-38, ¶¶ III(GG)(1)- III(GG)(3) (September 13, 2019).

<sup>66</sup> I&E St. No. 4, p. 31, referencing 66 Pa.C.S. § 1352(a)(1)-(6); 52 Pa.Code § 121.3(a)(1)-(8).

<sup>67</sup> PWSA Compliance Plan, p. 51.

<sup>68</sup> Partial Settlement, pp. 38, ¶¶ III(HH)(1) (September 13, 2019).

mandate to inventory its estimated 71,000 residential service line connections system-wide and to identify all lead lines by December 21, 2020.<sup>69</sup>

At the hearings in this case, PWSA entered an updated LTIIP dated August 21, 2019.<sup>70</sup> Although PWSA has not yet proposed to materially alter its metering spending plan, PWSA has committed to prioritizing identification of unmetered/unbilled locations to provide that all such locations would be identified by June 29, 2020.<sup>71</sup> Additionally, PWSA will identify all newly-metered and/or previously unbilled properties in the form of status updates provided in the quarterly reports it has agreed to provide through this Partial Settlement.<sup>72</sup> I&E St. in Support, p. 77.

With respect to workforce development, PWSA revised its LTIIP to provide the information that it has available.<sup>73</sup> Specifically, it explained that it quantified its staffing projections by evaluating then-current job openings/postings for the current and projected project demands, coupled with an understanding of PWSA staff's capacity to handle the projected workload. PWSA provided much more detailed workforce changes it made, including but not limited to, hiring four Senior Managers to manage operations field services teams, realigning resources to ensure that key program metrics are met (including meter installation rates), hiring laborers, restructuring Engineering and hiring additional employees, and soliciting contractors.<sup>74</sup> Although PWSA cannot presently estimate the exact number of contractors it may need, because this information will be dependent upon the progress of building an internal workforce and final determination of needs, it represents its commitment to build a workforce that meets the needs of its capital spending.<sup>75</sup> I&E St. in Support, p. 80.

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<sup>69</sup> I&E St. No. 4, p. 24, referencing PWSA Compliance Plan, p. 120.

<sup>70</sup> PWSA Hearing Exh. No. 3.

<sup>71</sup> PWSA Exh. RAW-C-43, p. 26.

<sup>72</sup> *Id.*

<sup>73</sup> Partial Settlement, p. 38, ¶¶ III(JJ) (September 13, 2019).

<sup>74</sup> PWSA Exh. RAW-C-43, pp. 50-51.

<sup>75</sup> Partial Settlement, pp. 38-39, ¶¶ III(KK) (September 13, 2019).

With respect to customer service issues, and consistent with the Commission's May Secretarial Letter, the Partial Settlement defers a number of customer service issues for litigation to Stage 2 of this proceeding.<sup>76</sup> This includes issues related to PWSA's termination policies and procedures, as well as PWSA's compliance with the tenant protections contained in Chapter 15 of the Public Utility Code, known as the Discontinuance of Service to Leased Premises Act (DSLPA). The deferral of these issues to Stage 2 permits the parties to more fully engage in the workshop process led by the Commission's Bureau of Consumer Services (BCS), and will allow for a more holistic review of PWSA's residential billing, collections, and termination procedures as part of a single proceeding.<sup>77</sup> Pittsburgh UNITED St. in Support, pp. 3-4.

With respect to PWSA's low income assistance programs (which PWSA refers to collectively as its customer assistance programs),<sup>78</sup> the Partial Settlement establishes a process for additional informal review and input into the development of PWSA's Low Income Assistance Program Plan, which PWSA must file as part of its next base rate proceeding.<sup>79</sup> This additional review process will help to ensure that PWSA's programs are appropriately designed to achieve the overarching goals of universal service programming: that is, to enable low income consumers to afford water and wastewater service and, in turn, to reduce uncollectible expenses and terminations that result from a consumer's inability to pay. Pittsburgh UNITED St. in Support, p. 4.

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<sup>76</sup> May Secretarial Letter, p. 2.

<sup>77</sup> *Id.*

<sup>78</sup> Note that PWSA refers to *all* programs that provide services or assistance to low income customers as "Customer Assistance Programs." PWSA's Bill Discount Program (BDP) is most comparable to the Customer Assistance Programs provided by other regulated utilities, and is within PWSA's portfolio of Customer Assistance Programs – which also includes its Hardship Fund Program, Winter Moratorium, and Community Environmental Project.

<sup>79</sup> PWSA is required to file a comprehensive Low Income Assistance Program Plan as part of its next base rate case. *See* Recommended Decision, Docket Nos. R-2018-3002645, -3002647, p. 23, ¶¶ F.1 & F.3 (Order entered Jan. 17, 2019) (hereinafter "Rate Case Settlement"); Opinion and Order, Docket Nos. R-2018-3002645 and R-2018-3002647 (Order entered Feb. 27, 2019) (approving the terms of the Rate Case Settlement).



With respect to lead remediation, the Partial Settlement contains several terms that will enhance the adequacy, reliability, and safety of PWSA's service. PWSA will develop a plan, in consultation with the Community Lead Response Advisory Committee, to find and replace all lead service lines in its system by 2026. PWSA will conduct lead service line replacements through its small-diameter water main replacement program in neighborhoods with the greatest vulnerability to lead exposure. PWSA will also continue its efforts to minimize harmful partial lead service line replacements and provide free tap water filters to the customers with the highest risk of lead exposure. The Partial Settlement builds on many of the provisions contained in the settlement of PWSA's rate case, approved by the Commission on February 7, 2019.<sup>80</sup> Pittsburgh UNITED St. in Support, pp. 4-5.

The undersigned ALJs agree with the candid assessment by PWSA with respect to its responsibilities. The transition to full compliance will be a process.<sup>81</sup> PWSA has many issues that need a path forward not only to address a long history of system disinvestment but also to implement the difficult and time-consuming steps needed to transition to full compliance. The hard reality is that PWSA is not able to simultaneously and immediately complete and finance all of the tasks required for full compliance with Commission regulations and continued compliance with the timelines mandated for capital improvement projects.<sup>82</sup> There is only a certain level of spending that PWSA will be able to sustain at current rates, along with additional just and reasonable rate increases.<sup>83</sup> PWSA's need to spend money on capital projects and/or Commission regulatory transitional efforts must be balanced against the requirement that PWSA's rates must be reasonable and not subject its ratepayers to "rate shock." PWSA St. in Support, p. 6.

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<sup>80</sup> See Rate Case Settlement, pp. 11-17, ¶ III.C.1.

<sup>81</sup> PWSA St. No. C-1R (Weimar) p. 4.

<sup>82</sup> See PWSA St. No. C-1R (Weimar) pp. 4-6.

<sup>83</sup> PWSA St. No. C-1R (Weimar), p. 5. This point holds true even if PWSA seeks a rate increase. Any rate increase will only support a certain level of spending on capital projects and/or transitional efforts, since that increase must also be balanced against the requirement that PWSA's rates must be reasonable.

The agreed-upon resolutions in the Partial Settlement recognize these realities and create workable and viable paths for PWSA's transition to full compliance. In some instances, the path consists of a gradual movement towards full compliance.<sup>84</sup> In others, the path includes taking partial steps in order to complete all the tasks necessary for compliance at some later date.<sup>85</sup> The undersigned ALJs agree with PWSA in that together these paths create a balance,<sup>86</sup> so that PWSA can increase its human capital, consultant or support resources to address the outstanding issues in a manner consistent with its ability to effectively manage the agreed upon compliance activities while maintaining its ability to meet its customer requirements and needs. PWSA St. in Support, pp. 6-7.

Accordingly, the undersigned ALJs find the Partial Settlement to be in the public interest and recommend approval of Partial Settlement without modification.

### **C. Litigated Issues**

As set forth on Exhibit 1 attached to the Partial Settlement, the issues addressed in Section III of the Partial Settlement propose to resolve 139 issues (nearly 75% of all identified issues). The Joint Petitioners propose to defer another 25 issues to future proceedings (including those issues that the Commission has already moved to Stage 2) and an additional four issues are no longer open due to either the passage of time and/or the resolution of other related matters. The 18 issues that have been reserved for litigation are encompassed within the below identified topic areas that the Joint Petitioners addressed in their briefs:

#### **1. The Cooperation Agreement between PWSA and City of Pittsburgh effective January 1, 1995**

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<sup>84</sup> See PWSA St. No. C-1R (Weimar), p. 4.

<sup>85</sup> See PWSA St. No. C-1R (Weimar), p. 4.

<sup>86</sup> Before any proposals in the Partial Settlement are changed or expedited, PWSA, the Parties and the PUC should try to agree on how any such modification changes the priorities or its funding abilities. PWSA St. No. C-1R (Weimar), p. 6.

2. Municipal properties and public fire hydrants within the city of Pittsburgh
  - a. Responsibility for payment of costs related to metering municipal properties within the City of Pittsburgh
  - b. Billing plan for unmetered and/or unbilled municipal properties within the City of Pittsburgh
  - c. Billing plan for public fire hydrants within the City of Pittsburgh
3. 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
4. PWSA’s residency requirement
5. Selected lead service line remediation issue
  - a. Replacement of private-side lead services lines not scheduled for replacement through PWSA’s current lead service line replacement programs
    - i. Income-based reimbursement for private-side lead service line replacements initiated by property owner
    - ii. Continuation of neighborhood-based replacement program
  - b. Replacement of Non-Residential Lead Service Lines

Partial Settlement, IV, The Remaining Issues reserved For Litigation, pp. 57-58

The remainder of this Discussion will be devoted to the litigated issues. There will be five major headings for the issues identified above. Some of these issues include subsections for ease of reading.

1. **The Cooperation Agreement between PWSA and City of Pittsburgh effective January 1, 1995**

PWSA was established as a municipal authority by the City of Pittsburgh in 1984.<sup>87</sup> PWSA originally served as a financing authority, however, pursuant to the Cooperation Agreement between PWSA and the City, effective January 1, 1995 (1995 Cooperation Agreement), PWSA assumed responsibility from the City for day-to-day operations of Pittsburgh's water and wastewater systems.<sup>88</sup> Pursuant to the 1995 Cooperation Agreement, PWSA and the City are to provide various services to each other. Among other things, PWSA is to pay for City services provided under the 1995 Cooperation Agreement and PWSA is to provide the City 600 million gallons of water each year at no cost.<sup>89</sup> I&E M.B., p. 22. The 1995 Cooperation Agreement was amended on March 21, 2011.<sup>90</sup>

In its Compliance Plan filing, regarding services provided by the City under the 1995 Cooperation Agreement, PWSA stated it pays the City an annual fee of \$7.15 million for a variety of services and costs, but there is no detailed invoice for the fee.<sup>91</sup> Regarding this fee, PWSA acknowledged that expenses charged to ratepayers must be just, reasonable and reasonably known and definite.<sup>92</sup> Accordingly, PWSA stated it was negotiating a new Cooperation Agreement to revise the payment to only reflect actual services provided.<sup>93</sup> I&E M.B., pp. 22-23.

On February 4, 2019, PWSA's Board voted to terminate the 1995 Cooperation Agreement, effective on 90 days' notice, or on May 5, 2019.<sup>94</sup> PWSA acknowledges the terms

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<sup>87</sup> PWSA Compliance Plan, p. 14.

<sup>88</sup> PWSA Compliance Plan, p. 14. Pittsburgh retains ownership of the system's assets subject to the 1995 Capital Lease Agreement. *See* PWSA Compliance Plan, pp. 107-108. As discussed in the Joint Petition for Settlement in this proceeding and associated Statement in Support, I&E supports PWSA's intention to purchase the system assets for \$1 in 2025.

<sup>89</sup> PWSA Compliance Plan, Appendix B, 1995 Cooperation Agreement, Sections VII.C. & VII.D.

<sup>90</sup> PWSA St. C-2 (Lestitian), p. 8; Compliance Plan, Appendix B.

<sup>91</sup> PWSA Compliance Plan, p. 105.

<sup>92</sup> PWSA Compliance Plan, p. 106.

<sup>93</sup> *Id.*

<sup>94</sup> PWSA St. C-2SD (Lestitian), p. 3.

of the 1995 Cooperation Agreement need to be updated with a new Cooperation Agreement. PWSA originally projected a new Cooperation Agreement would be executed during this proceeding. However, during the proceeding, PWSA extended the target date for terminating the 1995 Cooperation Agreement several times. PWSA cited continuing negotiations for a new Cooperation Agreement as the basis for changes.<sup>95</sup> I&E M.B., p. 24. 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.<sup>96</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>97</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>98</sup> PWSA M.B., p. 16. As of the hearing date, the 1995 Cooperation Agreement had still not been terminated.

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<sup>95</sup> In Direct Testimony, PWSA witness Lestitian stated the PWSA Board gave notice to the City that as of February 4, 2019, it was terminating the 1995 Cooperation Agreement in 90 days, or effective May 5, 2019, and that it hoped to have a new agreement in place by then. PWSA St. No. C-2, p. 8. In Rebuttal Testimony, filed May 6, 2019, PWSA witness Lestitian stated negotiations for a new Cooperation Agreement were continuing and, because the May 5, 2019 termination date had passed, PWSA’s Board extended the termination date by 60 days to July 5, 2019. PWSA witness Lestitian again expected a final Cooperation Agreement would be finalized by this date, but claimed, despite the extension of the termination date, if no new agreement is reached by July 5, 2019, PWSA will interact with the City at arm’s-length on a transactional basis. PWSA St. No. C-2R, p. 9, 11. Pursuant to a Commission Secretarial Letter issued May 15, 2019, the Commission provided parties to this proceeding a three-month extension to provide additional time to engage in settlement discussions. Hearings were thereafter scheduled for August 21 through 24, 2019, and parties were provided the opportunity to supplement testimony as the result of any new developments occurring during the three-month extension period. Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803, Fourth Interim Order Amending the Litigation Schedule (June 18, 2018), p. 4. In Supplemental Direct Testimony, PWSA witness Lestitian provided an update that the new Cooperation Agreement had not yet received all necessary approvals, and that PWSA’s Board again extended the date of termination of the 1995 Cooperation Agreement until October 3, 2019. PWSA St. No. 2-CSD, p. 3. The new Cooperation Agreement had been approved by City Council on July 24, 2019, but had not yet been finalized by the Mayor. PWSA St. No. 2-CSD, pp. 3-4.

<sup>96</sup> PWSA St. C-2SD (Lestitian), p. 3.

<sup>97</sup> PWSA St. C-2SD (Lestitian), p. 4.

<sup>98</sup> *Id.*

Regarding PWSA's 1995 Cooperation Agreement, the Commission directed the parties to discuss the following:

- 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.
- Whether PWSA can identify all categories of costs associated with the Cooperation Agreement.
- Whether PWSA receives any services from the City of Pittsburgh at no cost.
- 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.
- Whether the Cooperation Agreement, or any other agreement, provides the City with free or discounted wastewater service, stormwater service, or otherwise restricts the application of non-consumption fixed charges (i.e., customer charges) for water service.
- The extent to which the Public Utility Code overrides the binding arbitration provisions of the Cooperation Agreement.
- As recommended at Compliance Plan 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.<sup>99</sup>

I&E M.B., p. 23.

In response to the first Commission-directed discussion topic listed above, PWSA provided in its main brief that it estimates the cost of the services it provides to the City total almost \$20 million on an annual basis, which reflects actual or market costs. According to PWSA, 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, were set forth in Tables 1 and 2 in pages 18-19 of PWSA's main brief.<sup>100</sup> PWSA M.B., p. 18.

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<sup>99</sup> Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803, Corrected Technical Staff Directed Questions (November 28, 2018), p. 6.

<sup>100</sup> PWSA St. C-2 (Lestitian), p. 10; PWSA St. C-2R (Lestitian), pp. 10-11; PWSA Exhibit DML/C-6.

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

<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>

PWSA M.B., pp. 18-19.

PWSA responded to Directed Question No. 71, the second Commission-directed discussion topic listed above, that it had identified all categories of costs associated with the 1995 Cooperation Agreement. PWSA M.B., p. 19.

In response to the Commission-directed discussion topic question, whether PWSA receives any services from the City of Pittsburgh at no cost, PWSA replied that 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. PWSA asserts that 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>101</sup> PWSA M.B., p. 19.

In response to the Commission-directed discussion topic regarding the potential for PWSA to terminate the 1995 Cooperation Agreement with the City or otherwise allow the agreement to lapse in favor of market-based procurement practices, PWSA responded that it is PWSA's position that it may terminate the Cooperation Agreement on 90 days' notice.<sup>102</sup>

Although market-based procurement practices could replace the 1995 Cooperation Agreement, PWSA prefers to begin operating under the 2019 Cooperation Agreement while it is pending Commission review for reasons of transparency and predictability.<sup>103</sup> PWSA M.B., pp. 19-20.

In response to the Commission-directed discussion topic regarding whether the Cooperation Agreement, or any other agreement, provides the City with free or discounted wastewater service, stormwater service, or otherwise restricts the application of non-consumption fixed charges (i.e., customer charges) for water service, PWSA responded in its main brief that it 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>104</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

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<sup>101</sup> PWSA St. C-2 (Lestitian), p. 11.

<sup>102</sup> *Id.*

<sup>103</sup> PWSA St. C-2SD (Lestitian), p. 5-6.

<sup>104</sup> PWSA collects and conveys sewage to ALCOSAN for treatment. See footnote 83; PWSA Hearing Exh. 1 (Compliance Plan), p. 23.



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>105</sup> PWSA M.B., p. 20.

On the Commission-directed discussion topic inquiring into the extent to which the Public Utility Code overrides the binding arbitration provisions of the Cooperation Agreement, PWSA provided in its main brief that due to the Commission's authority under Section 508<sup>106</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>107</sup> PWSA M.B., p. 21.

In response to the Commission-directed discussion topic regarding the recommendation on page 107 of the Compliance Plan (whether the Commission may exercise jurisdiction under 66 Pa.C.S. § 508 to revise the Cooperation Agreement and the most appropriate vehicle for any such revision), PWSA responded that it views Section 508 as authorizing the Commission to vary, reform and revise the Cooperation Agreement.<sup>108</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>109</sup>

**a. PWSA's Position – The Cooperation Agreement between PWSA and City of Pittsburgh effective January 1, 1995**

PWSA and the City have been negotiating a new Cooperation Agreement to replace the 1995 Cooperation Agreement, which was amended on March 21, 2011. The objective of the negotiations, from PWSA's perspective, is to obtain terms that require annual

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<sup>105</sup> PWSA St. C-2 (Lestitian). P. 12.

<sup>106</sup> 66 Pa.C.S. § 508.

<sup>107</sup> PWSA St. C-2 (Lestitian), p. 12.

<sup>108</sup> 66 Pa.C.S. § 508.

<sup>109</sup> Partial Settlement at § III.P.1.

payments to reflect actual services being provided and the fair market value of those services. When the 2019 Cooperation Agreement is approved by PWSA and the City, PWSA intends to file it with the Commission for review under Section 507 of the Public Utility Code<sup>110</sup> to determine its reasonableness, legality and validity. When filing the 2019 Cooperation Agreement, PWSA will request that the Commission authorize it to immediately begin operating under those terms, subject to retroactive modifications.<sup>111</sup> PWSA R.B., p. 4. 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>112</sup> PWSA M.B., p. 16.

According to PWSA, I&E maintains that PWSA is non-compliant with Chapter 32 until the 1995 Cooperation Agreement is terminated and the Commission has either approved a new Cooperation Agreement or PWSA is transacting with the City on an arm's-length, as-needed basis. Because the 1995 Cooperation Agreement has been extended during this proceeding while negotiations are ongoing, I&E argues that the Commission should not allow it to be extended again beyond October 3, 2019. In I&E's view, PWSA should begin operating on a business-like basis with the City as soon as possible.<sup>113</sup> PWSA R.B. pp. 4-5.

PWSA claims that when it files the 2019 Cooperation Agreement, it plans to request that the Commission permit it to immediately begin operating under those terms, subject to subsequent retroactive revisions and future Commission determinations regarding the impact on rates. According to PWSA, this approach would be more structured and transparent than simply operating on a business-like basis. As of the date PWSA submitted its reply brief, the 1995 Cooperation Agreement was scheduled to be terminated on October 3, 2019. Therefore, PWSA argues it is premature to debate the issue of whether PWSA should be able to extend the 1995 Cooperation Agreement again. Also, PWSA points out that a final Commission Order is

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<sup>110</sup> 66 Pa.C.S. § 507.

<sup>111</sup> PWSA M.B., pp. 15-17.

<sup>112</sup> Partial Settlement at § III.P.1.

<sup>113</sup> I&E M.B., p. 29-32.

not expected to be issued until February 2020. PWSA opines that if another contract extension occurs, and I&E wishes to challenge that, it will need to do so through a separate proceeding. PWSA R.B., p. 5.

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>114</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, according to PWSA.<sup>115</sup> PWSA M.B., p. 17.

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; (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

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<sup>114</sup> PWSA St. C-2SD (Lestitian). P. 5.

<sup>115</sup> PWSA St. C-2SD (Lestitian), p. 5-6.

detailed breakdown and be charged based on the related cost of service.<sup>116</sup> PWSA M.B., pp. 17-18.

**b. I&E's Position – The Cooperation Agreement between PWSA and City of Pittsburgh effective January 1, 1995**

I&E asserts that the Commission should reject PWSA's request that it not consider the harmful operational realities and crippling loss of revenue it has suffered and continues to suffer under its 1995 Cooperation Agreement with the City on the basis that a new agreement is pending. According to I&E, despite PWSA's continued promises that a new, more equitable agreement would soon become available during the course of this proceeding, no new agreement has materialized; therefore, the terms and conditions of any pending or future agreement remain unidentified and cannot be evaluated. I&E submits that it is irresponsible to ignore the detrimental impact of the 1995 Cooperation Agreement upon PWSA's operations, which subsumes revenue desperately needed for lead remediation, infrastructure repair, and operational improvements, simply because a new agreement may eventually be in place someday. Because of this, and in order to become compliant with the Code, I&E recommended that PWSA begin operating on a business-like basis with the City as soon as possible and that it not be permitted to extend its 1995 Cooperation Agreement beyond the date currently set for termination, October 3, 2019.<sup>117</sup> I&E R.B., p. 10.

According to I&E, it is worthy to note that this discussion will present the Commission with the opportunity to dissuade PWSA from entering into any other politically-driven agreement that provides for payment of phantom costs to the City, guarantees any type of free service, or contains provisions that will hinder its operations and drive up costs for ratepayers to benefit the City. While PWSA characterizes any review of its 1995 Cooperation Agreement as "pointless," I&E is not advocating that the Commission review from a "validity

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<sup>116</sup> Partial Settlement at § III.P.5.

<sup>117</sup> I&E Main Brief, p. 32. As I&E noted in its Main Brief, p. 24 footnote 50, PWSA has extended the term of the agreement several times, raising the possibility that an additional extension beyond October 3, 2019 may ensue.

and legality perspective” as PWSA suggests.<sup>118</sup> Instead, I&E avers that at the time its reply brief was filed, the 1995 Cooperation Agreement remained in place. Therefore, providing the Commission with answers to its Directed Questions and informing it of the realities of PWSA’s operations is not only appropriate, but essential to protecting ratepayers. I&E, R.B., pp. 10-11.

Through the record created in its case, and as summarized in its main brief,<sup>119</sup> I&E attempted to build a record for the Commission to answer its Directed Questions regarding the 1995 Cooperation Agreement and to explain the detrimental impact the terms of the 1995 Cooperation Agreement has had upon PWSA and its ratepayers. According to I&E, PWSA has not disputed I&E’s argument that PWSA’s continued failure to transition from its 1995 Cooperation Agreement with the City to conducting business with the City on an arm’s-length, transactional basis produces a result that unfairly advantages the City at the expense of PWSA and its ratepayers. I&E submits that result is inconsistent with PWSA’s obligation to provide reasonable service. In its main brief, PWSA readily admits that it currently provides (1) water service to various City and City affiliated locations either without metering and billing them or metering them but without billing; (2) free storm water repairs in combined systems; (3) implementation of City-Wide Green First infrastructure programs; and (4) supports development of programs sponsored by the Urban Redevelopment Authority.<sup>120</sup> I&E R.B., pp. 11-12.

Although no party can quantify the value of lost revenue from providing free water and wastewater service to the City, according to I&E, evidence suggests that this unbilled usage represents upwards of \$11.4 million in foregone annual revenue.<sup>121</sup> I&E asserts that, while the loss of an estimated \$11.4 million in annual revenue represents a crippling and devastating loss to PWSA and its customers, I&E cannot quantify the expenses that PWSA has incurred in its provision of free stormwater repair and support for City programs, which I&E has learned about for the first time in PWSA’s main brief. Each dollar that PWSA inexplicably forfeits to

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<sup>118</sup> PWSA Main Brief, p. 11.

<sup>119</sup> I&E Main Brief, pp. 22-32.

<sup>120</sup> PWSA M.B., p. 20.

<sup>121</sup> I&E St. No. 3, p. 55.

the City and gratuitously pays to the City is one dollar more that ratepayers have to pay for compromised service. This result is completely antithetical to PWSA's obligations as a jurisdictional utility and it cannot be permitted to continue. I&E R.B., p. 12.

I&E asserts that PWSA seeks to evade the topic of 1995 Cooperation Agreement in favor of an anticipated 2019 Cooperation Agreement (Future Cooperation Agreement) that is pending changes from the City Mayor and acceptance by the PWSA Board. To that end, PWSA claims that an objective in negotiating a Future Cooperation Agreement is "so that annual payments reflect actual services being provided and the fair market value of those services,"<sup>122</sup> a goal that I&E believes is commendable. However, while I&E notes that the terms of the Future Cooperation Agreement are not identified or available for evaluation, I&E has significant concerns about the alleged value of City-provided services and PWSA-provided services as alleged in PWSA's main brief<sup>123</sup> and I&E is concerned that distorted information in favor of the City could underlie the Future Cooperation Agreement. I&E R.B., pp. 12-13.

Specifically, as I&E witness D.C. Patel indicated, certain costs assigned to PWSA by the City appeared completely unrelated to utility service, such as \$4,722,317 for street sweeping, litter can cleaning, litter cans costs, "yard debris," and "landslides."<sup>124</sup> Now, the same figure at issue, \$4,722,317, appears in PWSA's main brief as an alleged valid "Department of Public Works" expense payable to the City.<sup>125</sup> Additionally, I&E explained, although the value of City water and wastewater costs cannot accurately be measured without metering, it is estimated to be an annual loss of \$11.4 million in revenue. Despite this, PWSA has somehow quantified the amount at \$5,172,699 in its assessment of the value of services it provides to the City.<sup>126</sup> Thus, by undercutting the value of its services to the City and overvaluing the services it receives, I&E contends that PWSA may again be in the position of elevating the City's position

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<sup>122</sup> PWSA M.B., p. 15.

<sup>123</sup> PWSA M.B., pp. 18-19.

<sup>124</sup> I&E St. No. 2, pp. 19-21.

<sup>125</sup> PWSA M.B., p. 19.

<sup>126</sup> PWSA M.B., p. 18.

above its own, potentially for purposes of the Future Cooperation Agreement. While I&E's concerns cannot be validated at this time because the Future Cooperation Agreement is not yet available, I&E submits that close scrutiny of the terms of any Future Cooperation Agreement is warranted. I&E R.B., p. 13.

To that end, I&E opines that the appropriate level of scrutiny necessary to protect PWSA's ratepayers may not be possible if PWSA's request to operate under the terms of a Future Cooperation Agreement, while the Commission's Section 508<sup>127</sup> review is pending, is granted. I&E notes that in its main brief, PWSA proposes a process by which it will file the Future Cooperation Agreement (when available) and then request permission to begin operating under it subject to retroactive revisions directed by the Commission and subject to future determinations regarding the impact on rates.<sup>128</sup> While PWSA appears to be outlining its proposed plan, and not asking for its preapproval, which is wholly inappropriate in this case, I&E avers that it is premature to evaluate PWSA's plan because ratepayers, parties and the Commission would assume the risk of any terms contained in the Future Cooperation Agreement. Instead, the merits of PWSA's plan to request to operate under the Future Cooperation Agreement should be considered only if and when PWSA's makes the appropriate filing.<sup>129</sup> I&E R.B., p. 14.

Nevertheless, I&E argues that under no circumstances should PWSA be permitted to extend its 1995 Cooperation Agreement beyond October 3, 2019. Additionally, whether by course of a Future Cooperation Agreement, or in the absence of any cooperation agreement, PWSA must begin operating on a business-like, arm's-length basis with the City. I&E respectfully requests that the Commission order PWSA to revise its Compliance Plan consistent with these recommendations. I&E R.B., p. 14.

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<sup>127</sup> 66 Pa.C.S. § 508.

<sup>128</sup> PWSA M.B., p. 16.

<sup>129</sup> I&E M.B., p. 28.

**c. The OCA's Position - The Cooperation Agreement between PWSA and City of Pittsburgh effective January 1, 1995**

The 1995 Cooperation Agreement sets forth the terms of the working relationship between PWSA and the City of Pittsburgh regarding the services provided to and by the City.<sup>130</sup> Pursuant to the 1995 Cooperation Agreement, PWSA pays an annual \$7.15 million fee designated to compensate the City for a variety of services and costs, including vehicle leasing and fleet maintenance, provided by the City to PWSA.<sup>131</sup> This arrangement is not currently accompanied by detailed invoices of the costs and services provided.<sup>132</sup> OCA M.B., p 9.

According to the OCA, the parties understand the need for an updated agreement which more specifically defines the cost of services provided between PWSA and the City.<sup>133</sup> As such, PWSA has given notice to the City of termination of the 1995 Agreement and is working to renegotiate its terms under an updated 2019 Cooperation Agreement.<sup>134</sup> The 2019 Cooperation Agreement is expected to require the City to give periodic invoices detailing the services provided to PWSA and the fees for each service.<sup>135</sup> As provided in the Direct Testimony of Ashley Everette (OCA St. 1 at 9), the OCA agrees with PWSA that the 1995 Cooperation Agreement should be updated to accurately reflect the costs of services provided to and by the City and be accompanied by supporting documentation to be reviewed in each rate case.<sup>136</sup> Further, where a service may be obtained by PWSA at a lesser cost from another provider, PWSA should evaluate and consider obtaining the service from a non-City vendor or negotiating a lower cost with the City.<sup>137</sup> OCA M.B., p. 9.

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<sup>130</sup> See Compliance Plan, Appendix B.

<sup>131</sup> Compliance Plan, p. 15.

<sup>132</sup> OCA St. 1, p. 9.

<sup>133</sup> *Id.*

<sup>134</sup> PWSA St. No. C-2, p. 8.

<sup>135</sup> Compliance Plan, p. 106; PWSA St. No. C-2, pp. 8-9.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*



PWSA initially provided notice to the City that the 1995 Cooperation Agreement would be terminated effective May 5, 2019.<sup>138</sup> PWSA subsequently extended the termination date to October 3, 2019 to allow additional time for negotiations, with an effective date for the 2019 Cooperation Agreement set for the following day, October 4, 2019.<sup>139</sup> If a gap in time occurs between termination of the 1995 Cooperation Agreement and implementation of the 2019 Cooperation Agreement, the parties had previously agreed that PWSA and the City would interact on a transactional basis reflecting actual costs, including overhead.<sup>140</sup> OCA M.B., pp. 9-10.

Generally, Section 507 of the Public Utility Code requires Commission approval prior to implementation of contracts between public utilities and municipalities.<sup>141</sup> PWSA may seek a waiver of this provision pursuant to Section 3202(b).<sup>142</sup> PWSA plans to propose immediate implementation of the new 2019 Cooperation Agreement on October 4, 2019, subject to any retroactive revisions directed by the Commission.<sup>143</sup> The OCA understands PWSA's concerns with regard to delayed implementation of the 2019 Cooperation Agreement and does not oppose its immediate implementation following PWSA's request and the Commission's approval of the necessary waiver.<sup>144</sup> OCA M.B., p. 10.

After the negotiated terms are approved by PWSA and the City, the 2019 Cooperation Agreement will be reviewed in the appropriate proceeding as outlined in the Partial Settlement to determine whether it complies with the Code and the Commission's regulations.<sup>145</sup> OCA M.B., p. 10.

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<sup>138</sup> PWSA St. No. C-2, p. 8.

<sup>139</sup> PWSA St. No. C-2SD, p. 4.

<sup>140</sup> OCA St. 1, p. 9; PWSA St. No. 2-C, p. 8.

<sup>141</sup> 66 Pa.C.S. § 507.

<sup>142</sup> 66 Pa.C.S. § 3202(b).

<sup>143</sup> PWSA St. No. C-2SD, p. 5.

<sup>144</sup> OCA St. 1R-Supp., p. 2.

<sup>145</sup> Partial Settlement, ¶¶ III.P.1 and 5.

**d. Recommendation - The Cooperation Agreement between PWSA and City of Pittsburgh effective January 1, 1995**

The undersigned ALJs agree with I&E's position. It is premature to evaluate PWSA's 2019 Cooperation Agreement or Future Cooperation Agreement because ratepayers, parties and the Commission would assume the risk of any terms contained in the Future Cooperation Agreement. Instead, the merits of PWSA's plan to request to operate under the Future Cooperation Agreement should be considered only if and when PWSA's makes the appropriate filing.

PWSA prefers to begin operating temporarily under the 2019 Compliance Plan or Future Compliance Plan to be filed over interacting with the City on an arms-length transactional basis when the 1995 Cooperation Agreement is terminated. According to PWSA, 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>146</sup> PWSA M.B., p. 17. PWSA does not expound on its assertion that 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 less transparent to the Commission and interested parties and less structured for PWSA and the City.

Any Future Cooperation Agreement will involve two parties, the City and PWSA. PWSA is subject to the Commission's jurisdiction while the City is not. The City would be a contracting party with PWSA. Its position on contract provisions that are not in compliance with the Code or Commission regulations, such as arbitration provisions, as well as its position with respect to the Commission's authority to review and modify/revise any cooperation agreement filed by PWSA pursuant to Section 508 of the Code is not known.

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<sup>146</sup> PWSA St. C-2SD (Lestitian), p. 5-6.

In Surrebuttal Testimony I&E witness Patel stated PWSA clearly understands that a new Cooperation Agreement must comply with the Code and therefore, PWSA should only enter into a new Cooperation Agreement if it believes it is lawful.<sup>147</sup> I&E witness Patel also agreed with PWSA's intention to interact with the City on a transactional basis if no new agreement is negotiated and executed by July 5, 2019.<sup>148</sup>

The undersigned ALJs agree that the 1995 Cooperation Agreement cannot be extended past the October 3, 2019 termination date. The undersigned ALJs also conclude that it is premature to address any Future Compliance Plan Agreement in this proceeding. PWSA should adopt an interim approach and interact with the City on a transactional basis. Undoubtedly, invoicing for services provided by PWSA to the City and by the City to PWSA is a substantial part of any Future Cooperation Agreement, so beginning to interact on a transactional basis after October 3, 2019 should not prove to be an onerous task. This is especially true considering the fact that the contracting parties are far along in the process of finalizing an agreement.

## **2. Municipal Properties and Public Fire Hydrants within the City of Pittsburgh**

This second litigated issue was addressed by both PWSA and I&E. This issue is divided into three subsections below, consistent with the briefing outline agreed upon by the parties and adopted by the undersigned ALJs. At the conclusion of each subsection is the undersigned ALJs' recommendation for each subsection of this issue. At the outset of their arguments addressing this issue, both PWSA and I&E globally discussed the historic relationship between the City and PWSA and the importance or significance of the relationship within the context of this proceeding.

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<sup>147</sup> I&E St. No. 2-SR, pp. 6-7.

<sup>148</sup> When witness Patel made his recommendation, PWSA's Board had not yet, but subsequently did, further extend the 1995 Cooperation Agreement until October 3, 2019.

According to PWSA, the recurring theme underlying all of I&E's positions is that the City is "no different" from any other customer and must be treated the exact same way as soon as possible.<sup>149</sup> PWSA asserts that I&E gives no weight or consideration to the historical relationship of these two entities. The City created PWSA, and still owns the assets (which it leases to the Authority until 2025). Most importantly, in the 1995 Cooperation Agreement with the City (which is in the process of being renegotiated), the City enjoys certain privileges of ownership, including the right to receive up to 600 million gallons of water without charge.<sup>150</sup> Thus, PWSA asserts, the nature of the relationship and the ownership of the assets is a fact that needs to be taken into account when addressing the issues in this proceeding. According to PWSA, I&E also fails to recognize that the City is a governmental body, meaning that it is not like commercial enterprises that are utility customers. Rather than acknowledging that these realities directly impact the ability of PWSA to receive actual payments from the City for services rendered, I&E defaults to claiming that PWSA has not supported its proposals and criticizing PWSA for being overly concerned about the City.<sup>151</sup> PWSA contends that I&E's advocacy, which fails to account for the nature of the relationship between these two entities, must be rejected by the Commission because it offers no realistic way in which to ensure that PWSA will actually receive any payment from the City. PWSA R.B., pp. 7-8.

In contrast, PWSA claims that each one of its proposals creates a pathway to receive some payments now and to move to full payments from the City over time. Importantly, PWSA points out, the City is agreeing to make these payments. According to PWSA, securing the agreement and cooperation of the City (subject to ultimate Commission approval) is a reasonable way to proceed because it will ensure the success of the ultimate goal, i.e. the City will transition to paying fully for services rendered. PWSA argues that demanding – on one hand – that it refuse payment from the City for a portion of meter installation costs while – on

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<sup>149</sup> I&E M.B., p. 36 ("PWSA has not explained why this rationale would not apply to all unmetered properties, not just municipal properties"); 43 ("PWSA should operate on a business-like basis with the City as soon as possible.") and 44 ("PWSA has provided no basis distinguishing why charges related to public fire hydrants should be treated differently than any other water usage by the City.").

<sup>150</sup> See I&E M.B., p. 22.

<sup>151</sup> I&E M.B., p. 41.

the other hand – that PWSA immediately begin seeking payment for water usage makes no sense and does nothing to guarantee that PWSA will receive any payments. There would be little recourse to PWSA from issuing bills to the City that go unpaid given the potential impact of terminating water service to essential governmental services and scores of municipal facilities. Thus, PWSA opines that the end result of adopting I&E’s positions would be to increase PWSA’s uncollectible expense and thrust PWSA and the Commission into protracted legal wrangling, the cost of which all PWSA’s ratepayers will be required to bear. PWSA R.B., p. 8.

I&E characterizes PWSA’s concerns about increasing its uncollectible expense due to a lack of City payments as “troubling and misplaced” because, according to I&E, there is “no evidence that the City would be unable to pay bills” and the “City is a sophisticated entity...fully capable of making the arguments PWSA made on its behalf.”<sup>152</sup> PWSA contends that these claims ignore reality. PWSA R.B., p. 8.

PWSA explains that utilities should be concerned about the ability of their ratepayers to pay because it impacts the revenues that the utilities are able to realistically depend on receiving, which informs utilities about what money will be available to fund operations and infrastructure needs. For a cash flow utility like PWSA, this is even more important because it is solely dependent on revenues received to fund its operations (i.e. PWSA does not have any shareholders or any opportunity to receive a rate of return from ratepayers). In fact, the Commission’s initiatives regarding low income assistance programs are a clear demonstration of the Commission’s desire that utilities consider the ability to pay of their customers. PWSA R.B., pp. 8-9.

According to PWSA, while the City is not a low-income customer, neither is it a “traditional” commercial customer. The City does not, like other private and public companies, engage in the exchange of goods or services for money and does not have shareholders and/or profits available from which to meet payment obligations. Rather, the City is a local governmental body that exists for the purpose of providing public services for its residents and is

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<sup>152</sup> *Id.*

dependent on paying its financial obligations through taxes and other fees received from its residents. Pittsburgh has only in 2018 terminated its status as a financially distressed city under the direction of a state-appointed coordinator under “Act 47.”<sup>153</sup> According to PWSA, this means that imposing what could be a substantial new obligation on the City, essentially without notice or any ability for the City to plan and to incorporate the new financial obligations into its budget, almost certainly will result in an inability of the City to pay, until (or if) it could increase taxes to pay for these totally new charges.<sup>154</sup> Also of importance to remember, PWSA asserts, is that many of the City’s residents are also PWSA’s ratepayers – and many of them are lower or moderate income – meaning that increasing City taxes and fees may directly impact their ability to pay PWSA. PWSA R.B., p. 9.

In summary, PWSA contends that recognizing these realities and determining how to work with them to achieve the ultimate goal of ensuring payment for services rendered is not “misplaced” nor unreasonable and most certainly does not – as I&E alleges – evidence a lack of focus by PWSA “on ensuring the integrity of its operations and providing adequate, efficient, safe, reliable and reasonable service.”<sup>155</sup> Rather, PWSA argues, these realities fully support PWSA’s view in this proceeding that the current proposals that have been negotiated between the City and PWSA are a far more reasonable path forward because they reflect an agreement with the City and assure some immediate payments with a plan for transitioning to full payments in the near future (within five years). PWSA R.B., p. 10.

In contrast, I&E views the significance of the historical relationship between PWSA and its creator, the City, quite differently from PWSA. According to I&E, PWSA contends that the relationship between it and the City is governed by the Cooperation Agreement, not the Code and Commission mandates.<sup>156</sup> I&E asserts that reliance on this

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<sup>153</sup> <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/03/26/with-state-help-pittsburgh-got-its-finances-under-control>.

<sup>154</sup> PWSA M.B., p. 23, 28; PWSA St. C-1 (Weimar), p. 27; PWSA St. C-1R (Weimar), p. 21.

<sup>155</sup> I&E M.B., p. 41.

<sup>156</sup> PWSA M.B., p. 22.

argument to justify PWSA's metering or any other program in conflict with the Code and Commission mandates is absurd and meritless. According to I&E, in addition to the Commission's authority to reform contracts,<sup>157</sup> it is axiomatic that an illegal contract is unenforceable.<sup>158</sup> I&E asserts that PWSA and the City cannot circumvent the Code and Commission mandates with a Cooperation Agreement. Moreover, the entire purpose of this proceeding, as required by the General Assembly, is for PWSA to come into compliance with the Code and Commission rules, regulations, and orders. Although PWSA and the City may not have had the "traditional 'independent'" utility-customer relationship before coming under Commission jurisdiction,<sup>159</sup> they must now. PWSA is an independent entity from the City,<sup>160</sup> now under the jurisdiction of the Commission. According to I&E, a new Cooperation Agreement will not change this fact. I&E R.B., p. 15.

Relatedly, PWSA states the resolution of litigated metering issues will not occur until a new Cooperation Agreement is subject to a future Commission proceeding.<sup>161</sup> I&E disagrees with this position and asserts the Commission must decide these issues related to metering in this proceeding for four reasons. First, the parties never agreed metering issues would exclusively be determined in a future proceeding regarding a new Cooperation Agreement. The Partial Settlement does not state otherwise. Second, a Commission decision on these issues as soon as possible is necessary. There may be some overlap in proceedings if PWSA files a new Cooperation Agreement for review before a Commission decision in this proceeding is issued. However, this issue of timing should not preclude the Commission from

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<sup>157</sup> 66 Pa.C.S. § 508.

<sup>158</sup> See, e.g., 16 Summ. Pa. Jur. 2d Commercial Law § 4:2 (2d ed.); Restatement (First) of Contracts § 580 (1932) (June 2019 update).

<sup>159</sup> PWSA M.B., p. 22.

<sup>160</sup> Both I&E and PWSA cite numerous authorities supporting this contention. I&E M.B., p. 31, fn. 80; PWSA M.B., p. 30, fn. 101

<sup>161</sup> PWSA M.B., p. 23.

issuing a decision in this proceeding.<sup>162</sup> Third, the Commission specifically asked that questions regarding these metering issues be discussed in this proceeding.<sup>163</sup> Therefore, it is appropriate to address these metering issues now. Fourth, as detailed in I&E’s Main Brief,<sup>164</sup> PWSA explained its proposal to recover metering costs and its step-billing approach as part of its Compliance Plan generally, not exclusively in the context of a new Cooperation Agreement. Therefore, it is proper that the Commission consider these metering issues now and make a determination regarding PWSA’s Compliance Plan metering proposals. I&E R.B., pp. 15-16.

Regarding its position that the City should receive special treatment, PWSA repeats its assertions from testimony, according to I&E. Generally, PWSA advocates for the City to have a “reasonable” amount of time to start receiving full bills, or else the City may simply not pay.<sup>165</sup> I&E contends this rationale should be rejected. I&E explains there is no evidence in the record that the City will not pay its bills. According to I&E, the Commission should not and cannot be afraid to enforce the Code and its mandates on such unsubstantiated and unmerited grounds. To do so would create terrible precedent and invite other unwarranted tests of Commission power rooted in fears of non-compliance. Also, no other ratepayers are offered such outright deference. Customer assistance programs are typically the subject of extensive universal service proceedings regarding the payment ability of a utilities’ low-income residential customers.<sup>166</sup> I&E is unaware of any situation where a municipality has been allowed to forego its utility payments based on supposed ability to pay, which, again, has not been established here. I&E is of the opinion that to approve such an exception here would create a dangerous precedent that other municipalities could cite. I&E R.B., p. 17.

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<sup>162</sup> To the contrary, I&E advocated for briefing of this issue so the Commission has the opportunity to weigh-in on a contested, on-the-record issues as soon as possible. The timing of review of a new Cooperation Agreement is uncertain, and PWSA may file a new rate case soon. The question of foregone revenues will continue to be an issue and PWSA should receive direction from the Commission as soon as possible. I&E R.B., p. 16.

<sup>163</sup> Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803, Corrected Technical Staff Directed Questions (November 28, 2018), pp. 6, 15-16.

<sup>164</sup> PWSA M.B., pp. 32-44.

<sup>165</sup> PWSA M.B., p. 24.

<sup>166</sup> *See, e.g.*, 52 Pa.Code § 69.262 (“Low income customers – A residential utility customer whose annual household gross income is at or below 150% of the Federal poverty income guidelines.”) (emphasis added).



PWSA states the Compliance Plan proceeding only requires a plan for compliance, not immediate compliance.<sup>167</sup> According to I&E, PWSA mischaracterizes parties' positions.<sup>168</sup> I&E explains that adoption of its recommendation would not culminate in full bills until metering is complete, which could be as late as 2024.<sup>169</sup> Further, I&E's proposal would not even be introduced until the next rate case is filed, so actual implementation would not occur until after PWSA's next rate case concludes. I&E explains that there is no demand for immediate, full compliance. However, according to I&E, PWSA's proposal would allow the City to continue to receive free water service until 2024 for unmetered properties.<sup>170</sup> I&E contends that such undue generosity in the face of a historic expansion in capital spending and associated rate increases would exacerbate the already unjust favoring of the City at the expense of all other ratepayers. I&E argues that PWSA should push the City to pay for at least some of (i.e., the customer charge) all (i.e., including unmetered usage) water service until metering is complete. Once metering is complete, the City should be billed its full amount immediately. According to I&E, neither PWSA nor the City (which elected not to participate in this proceeding, despite ample notice)<sup>171</sup> have provided an evidentiary basis to find otherwise.

**a. Responsibility for Payment of Costs Related to Metering Municipal Properties within the City of Pittsburgh**

Section 65.7 of the Commission's regulations provide, *inter alia*, that a public utility shall, "unless otherwise authorized by the Commission...provide; install at its own expense; and continue to own, maintain and operate all meters" and "provide a meter to each of its water customers....and shall furnish water service...exclusively on a metered basis."

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<sup>167</sup> PWSA M.B., pp. 24-25.

<sup>168</sup> PWSA claims "because [PWSA's proposals] will not lead to full payment by the City immediately...some parties have taken the view that PWSA's proposals in this regard should be rejected." PWSA M.B., p. 23.

<sup>169</sup> I&E M.B., p. 43.

<sup>170</sup> See, e.g., PWSA M.B., p. 26 ("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%.") (emphasis added).

<sup>171</sup> I&E M.B., p. 41.

PWSA's Compliance Plan states it is generally in compliance with Section 65.7, except 200-400 municipal buildings and 500 flat rate customers are not metered.<sup>172</sup> PWSA's Compliance Plan says PWSA "hopes to recover some of the associated costs (e.g. additional plumbing, meter pits, backflow prevention devices, etc.) from the City." I&E M.M., p. 32.

In its Directed Questions, the Commission asked parties to address:

Whether the Public Utility Code provides for any proposed charge for meter installation and other related appurtenances (i.e., additional plumbing, meter pits, backflow prevention devices, etc.) and if PWSA's proposed tariff adequately addresses requirements for meter installation and other related appurtenances.<sup>173</sup>

I&E M.B., p. 32.

In Direct Testimony, PWSA witness Robert Weimar stated that the Code does not expressly prohibit a charge for meter installation, meters or meter pits provided by a public utility.<sup>174</sup> The rebuttal testimony of PWSA witness Weimar first introduced the assertion that PWSA has an agreement with the City to split the costs of meter installations 50/50.<sup>175</sup> PWSA witness Weimar also asserted an additional 300-400 "municipally-owned fountains, pools, etc." are also unmetered.<sup>176</sup> I&E M.B., p.33.

In Direct Testimony, I&E witness Ethan Cline stated that PWSA should be responsible for costs related to meter installation, but the issue would be discussed further in its brief.<sup>177</sup> In Surrebuttal Testimony, I&E witness Cline stated, on advice of counsel, the newly expressed arrangement to split costs of meter installation with the City 50/50 would violate

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<sup>172</sup> PWSA Compliance Plan, pp. 67-69.

<sup>173</sup> Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803, Corrected Technical Staff Directed Questions (November 28, 2018), p. 6.

<sup>174</sup> PWSA St. No. C-1, p. 23.

<sup>175</sup> PWSA St. No. C-1R, p. 18.

<sup>176</sup> PWSA St. No. C-1R, p. 16.

<sup>177</sup> I&E St. No. 3, pp. 22-23.

66 Pa.C.S. § 1304, i.e., the prohibition against unreasonable rate discrimination, when the proposal to charge non-municipal customers the full cost of meter installation remained.<sup>178</sup> I&E M.B., p. 33.

**i. PWSA's Position - Responsibility for Payment of Costs Related to Metering Municipal Properties within 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>179</sup> According to PWSA, this is a reasonable approach that takes into consideration the historical relationship between the City and PWSA and the fact that this is an 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>180</sup> Thus, according to PWSA, 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, PWSA asserts that reaching an 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. PWSA M.B., pp. 25-26.

According to I&E, PWSA has not provided "an adequate basis why the City should be charged for costs related to metering generally" and PWSA has no choice pursuant to 52 Pa.Code § 65.7 but to fully absorb the costs of installing meters to City properties. PWSA argues that I&E's position must be rejected for several reasons. PWSA R.B., p. 10.

First, PWSA explains, the City is not like every other customer, and securing its agreement to share in these costs is reasonable. Such agreement ensures that payment will actually be received to address the underlying concerns related to the current relationship,

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<sup>178</sup> I&E St. No. 3-SR, p. 11.

<sup>179</sup> PWSA St. C-1R (Weimar), p. 18.

<sup>180</sup> PWSA Water Tariff, p. 42 (Fees for New Meters), 43 (New Meters) and 49 (Customer Facilities Fee).

whereby the City is not paying for services rendered. PWSA submits that this is a good result, consistent with the overall goal and should be adopted. PWSA R.B., p. 10.

Second, I&E's view that PWSA is prohibited from accepting any payment from the City in violation of 52 Pa.Code § 65.7(b) is not correct, according to PWSA. Prior to coming under the jurisdiction of the Commission, PWSA assessed customers' charges for new meters.<sup>181</sup> PWSA's current Commission-approved tariff permits it to continue to assess these charges by requiring new customers to pay a "Customer Facilities Fee" which includes charges for the meters and equipment, the remote reading devices and their installation.<sup>182</sup> The Commission approved PWSA's tariff as part of PWSA's rate case, and PWSA's tariff became effective on March 1, 2019.<sup>183</sup> Thus, according to PWSA, the Commission has authorized PWSA to assess a fee for new meter installation as the Commission has the discretion to do pursuant to 52 Pa.Code § 65.7(b). PWSA R.B., p. 11.

Finally, PWSA disputes I&E's claim that accepting payment from the City for 50% of the costs of installing new meters is "unreasonable discrimination in rate making" in violation of 66 Pa.C.S. § 1304.<sup>184</sup> According to I&E, PWSA has not explained why its plan with the City should not apply to all unmetered properties, and many other utilities could claim that a lack of payments would result in reduced investments in other critical projects and high risk priorities.<sup>185</sup> However, PWSA contends that it has repeatedly explained why the City is not like any other customer and why securing agreement from the City to share in the costs of meter

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<sup>181</sup> PWSA Official Prior Tariff, Rule 305, pp. 3-6 as filed at Pa. P.U.C. Docket No. M-2018-2640802. PWSA's Official Prior Tariff was effective prior to coming under the Commission's jurisdiction through March 1, 2019 and 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>182</sup> PWSA Tariff Water – Pa. P.U.C. No. 1, Part III, Section D.5, D.9 and Section G.2, pp. 42, 43, and 49.

<sup>183</sup> *Pa. Pub. Util. Comm'n v. Pittsburgh Water and Sewer Authority*, Docket No. R-2018-3002645, Secretarial Letter dated March 6, 2019 approving Original Tariff Water.

<sup>184</sup> I&E M.B., p. 36.

<sup>185</sup> I&E M.B., p. 36. Note that per the Partial Settlement, PWSA will pay for the meter and meter installation for non-municipal properties. If approved, PWSA will revise the appropriate section of its tariff as part of the compliance filing. Partial Settlement § III.G.2, p. 22.

installations is a reasonable approach to ensuring that PWSA receives payment from the City. I&E simply does not agree, but such disagreement is not a basis upon which to claim that PWSA has not explained its reasoning. Furthermore, PWSA asserts that ignoring the realities of PWSA's relationship with the City in a broader sense is not a productive way to resolve the current nonpayment issues with the City. Similarly, the claim that other utilities could make arguments similar to PWSA does not further the analysis of this issue because no other utility is similarly situated to PWSA. No other utility has operated as a water and wastewater conveyance authority for decades and PWSA is only less than two years into its transition to Commission regulation. PWSA R.B., p. 11-12.

For all these reasons, PWSA argues that I&E's view that the Commission cannot approve a plan negotiated between the City and PWSA whereby the City agrees to pay 50% of the costs of new meter installations must be rejected. PWSA concludes that such a plan is a reasonable way to begin addressing the historical nonpayment issues between the City and PWSA and one that is not inconsistent with PWSA's current approved tariff.

**ii. I&E's Position - Responsibility for Payment of Costs Related to Metering Municipal Properties within the City of Pittsburgh**

According to I&E, PWSA devotes little detailed discussion to this topic.<sup>186</sup> PWSA generally asserts the 50/50 split proposal is reasonable because of the historical relationship with the City, the City will need to fund a new cost, PWSA's tariff allocates costs differently in different circumstances, and PWSA should receive recovery for some of its costs. I&E R.B., p. 18.

First, I&E asserts that the "historical relationship" between the City and PWSA does not entitle PWSA or the City to violate Commission regulations.<sup>187</sup> Second, any concern about the City's ability to fund a new cost is immaterial to this issue. To comply with

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<sup>186</sup> PWSA M.B., pp. 25-26.

<sup>187</sup> See, e.g., I&E M.B., p. 31, asserting the General Assembly's purpose of placing PWSA under Commission oversight was to prevent unfair relationships from continuing.

52 Pa.Code § 65.7, PWSA, not the City, will be responsible for metering costs.<sup>188</sup> Third, I&E claims it is unclear what point PWSA is trying to make by saying its tariff allocates costs differently. Without discussion of the relevance of this statement to its tariff provisions, the City, and 52 Pa.Code § 65.7, this statement is unsupported in I&E's view.<sup>189</sup> Last, I&E contends that the fact that PWSA would receive payments under the 50/50 arrangement does not entitle it to violate Commission regulations. I&E asserts the Commission should enforce the Code and its mandates indiscriminately, whether it benefits PWSA or the City. Otherwise, I&E opines that PWSA will not be able to have or maintain an arm's-length, businesslike relationship with the City. I&E notes that of the litigated issues, enforcement of the Code here will benefit the City rather than PWSA. According to I&E, that is what Commission regulations dictate. Therefore, the Commission should require PWSA to be responsible for the costs of meter installation in accordance with 52 Pa.Code § 65.7.

**iii. Recommendation - Responsibility for Payment of Costs  
Related to Metering Municipal Properties within the City of  
Pittsburgh**

The undersigned ALJs agree that PWSA must provide meter service and accept responsibility for the costs of meter installation pursuant to 52 Pa.Code § 65.7. PWSA has not provided a good reason for deviating from this regulatory requirement and permitting a 50/50 split cost relationship with the City. The undersigned recognize the historic relationship between the City and PWSA, but the purpose of this proceeding is to bring PWSA into compliance with the Code and Commission regulations.

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>190</sup> Implicit in

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<sup>188</sup> I&E M.B., pp. 32-36.

<sup>189</sup> PWSA cites to its Water Tariff at 42 (Feeds for New Meters), 43 (New Meters) and 49 (Customer Facilities Fee). PWSA M.B., p. 26, fn. 81. Although PWSA currently charges for these costs, pursuant to the Joint Petition for Settlement, for non-municipal properties, PWSA will pay for the costs of meters and meter installation. Partial Settlement, Section III.G.3.a.

<sup>190</sup> 66 Pa.C.S. § 3204(b).

this directive are the following: (1) PWSA is not currently “in compliance;” and, (2) PWSA needs a plan to come into compliance. PWSA M.B., p. 25. PWSA failed to demonstrate how the proposed 50/50 meter cost sharing relationship with the City is a better pathway to compliance than following this particular regulation, Section 65.7, moving forward. The undersigned recommend that the Commission require PWSA to comply with 52 Pa.Code § 65.7.

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

Pursuant to the 1995 Cooperation Agreement, the City is entitled to receive up to 600 million gallons per year from PWSA for free. The majority of City properties are unmetered and actual use is unknown and estimated to be higher.<sup>191</sup> PWSA recognizes the provision of unmetered, unbilled service violates numerous provisions of the Code and Commission regulations.<sup>192</sup> I&E M.B., p. 36.

In addition to the City, PWSA does not bill certain non-profit entities for water service.<sup>193</sup> Some of these properties (non-profits and City) have meters installed, but many of them are not metered at the present time.<sup>194</sup> The properties that are not metered are not receiving bills under PWSA’s tariff for unmetered service.<sup>195</sup> PWSA recognizes that it is out of compliance with the Public Utility Code and the Municipality Authorities Act regarding its failure to bill municipal properties (some are unmetered and some properties are metered) within the City. OCA St. 2 at 5.

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.

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<sup>191</sup> PWSA Compliance Plan, p. 108.

<sup>192</sup> PWSA Compliance Plan, p. 109.

<sup>193</sup> OCA St. 2, p. 4.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

As noted, PWSA has agreed in the Partial Settlement to meter all unmetered City properties.<sup>196</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>197</sup> Therefore, 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>198</sup> As part of the plan, the City would pay the percentage applicable in the year in which any new meter is installed. So, for example, a meter installed in year four would pay 80% of the metered usage.<sup>199</sup> PWSA M.B., pp. 26-27.

Upon review of this proposal, the Commission propounded directed questions to be discussed by the parties.<sup>200</sup> The Commission directed the parties to address:

- Estimated revenue loss associated with unmetered and unbilled usage (Question 82 on PWSA Exh. RAW/C-1).
- The legality of the proposed PWSA step billing approach (Question 83 on PWSA Exh. RAW/C-1).
- The feasibility of estimating usage based on engineering estimates on all currently unmetered customers and billing immediately based on those estimates (Question 84 on PWSA Exh. RAW/C-1).
- Whether initiating the 20/40/60/80/100 percent step billing proposal immediately based on those engineering estimates would be feasible and legal (Question 85 on PWSA Exh. RAW/C-1).

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<sup>196</sup> See Partial Settlement at § III.G.

<sup>197</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), p. 31.

<sup>198</sup> Compliance Plan, p. 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.

<sup>199</sup> PWSA St. C-1 (Weimar), p. 27, fn 19.

<sup>200</sup> PWSA Exh. RAW/C-1, Directed Questions 82 through 89.



- Whether any 20/40/60/80/100 percent billing program should be phased as opposed to stepped (Question 86 on PWSA Exh. RAW/C-1).
- The feasibility of immediately implementing a metering and billing triage plan with the following hierarchy (Question 88 on PWSA Exh. RAW/C-1):
  - Metering/estimating and billing high volume customers (Question 88.1).
  - Metering/estimating and billing mid-volume customers (Question 88.2).
  - Metering/estimating and billing residential and other low-volume customers (Question 88.3).
- If any of the 200-400 City-owned and/or operated locations that are unbilled for water service are billed for wastewater service (Question 89 on PWSA Exh. RAW/C-1).<sup>201</sup>

I&E M.B., pp. 37-38.

PWSA asserts that its 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>202</sup> According to PWSA, 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. PWSA opines that 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. PWSA M.B., p. 27.

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<sup>201</sup> Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803, Corrected Technical Staff Directed Questions (November 28, 2018), pp. 15-16.

<sup>202</sup> PWSA St. C-1 (Weimar), p. 28.

According to PWSA, several of the Directed Questions appear to agree with PWSA's 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 implementing a metering and billing triage plan immediately.<sup>203</sup> PWSA again explains that 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>204</sup> Whether the estimate is to be developed based on an engineering estimate (Question 84) or implementation of a triage plan (Question 88), PWSA contends that it would still have the same problem of how to estimate the usage. PWSA M.B., pp. 27-28.

Regarding the feasibility of immediately applying the monthly customer charge to known but unbilled or unmetered customers prior to meter installation (Question 87), PWSA explains that it is evaluating the proposal for a flat rate for all unmetered and unbilled municipal and governmental properties/buildings served by PWSA.<sup>205</sup> According to 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.<sup>206</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>207</sup> Given these realities, PWSA opines that imposing a flat rate on City properties will likely result simply in unpaid charges. Accordingly, PWSA argues that its proposal to conduct an analysis of this

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<sup>203</sup> PWSA Exh. RAW/C-1, Directed Questions 84, 85, 87, and 88.

<sup>204</sup> PWSA St. C-1 (Weimar), p. 29.

<sup>205</sup> PWSA St. C-1R (Weimar), p. 22.

<sup>206</sup> PWSA St. C-1R (Weimar), p. 22.

<sup>207</sup> PWSA St. C-1R (Weimar), p. 21.

issue (flat rate for all unmetered and unbilled municipal and governmental properties/buildings) is reasonable. PWSA M.B., p. 28.

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. According to PWSA, 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>208</sup> Implicit in this directive: (1) PWSA is not currently "in compliance;" and, (2) PWSA needs a plan to come into compliance. PWSA contends that its 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. PWSA M.B., p. 29.

PWSA's transition proposal for unmetered and/or unbilled municipal properties within the City of Pittsburgh outlined above and its proposal to study a flat rate for all unmetered and unbilled municipal and governmental properties/buildings were rejected by I&E. The OCA offered a flat rate proposal in addition to PWSA's transition proposal discussed above. I&E offered a flat rate proposal, at minimum the customer charge for the customer's class, for all unbilled customers in PWSA's next base rate case, and, as customers are metered, their usage should be billed immediately.

The alternative proposals for billing unmetered and/or unbilled municipal properties within the City offered by I&E and the OCA will be explained in separate subsections below, along with PWSA's arguments opposing each proposal. A discussion and recommendation will then be provided as a third, separate subsection for this issue.

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<sup>208</sup> 66 Pa.C.S. § 3204(b).

**i. I&E’s Proposal - Billing Plan for Unmetered and/or Unbilled Municipal Properties within the City of Pittsburgh**

I&E witness Cline recommended that PWSA introduce a flat rate, at minimum, the customer charge for the customer’s class, for all unbilled customers in its next base rate case, and, as customers are metered, their usage should be billed immediately.<sup>209</sup> I&E M.B., p. 40.

In Rebuttal Testimony, PWSA witness Weimar states the goal of the Compliance Plan proceeding is to arrive at an acceptable plan for compliance, not simply identify where PWSA is not in compliance.<sup>210</sup> PWSA witness Weimar then again reiterated the step-billing approach is appropriate because the City has never been billed and needs time to manage these new costs.<sup>211</sup> PWSA witness Weimar then claims I&E’s proposed flat-rate approach would be “rate shock” to the City.<sup>212</sup> I&E M.B., p. 40.

In Surrebuttal Testimony, I&E witness Cline stated PWSA had not provided an adequate reason why, at minimum, the City could not be responsible for the customer charge, which would provide needed revenue for PWSA’s operations, including but not limited to infrastructure repair, lead remediation, and meter installation.<sup>213</sup> Regarding “rate shock,” I&E witness Cline stated PWSA witness Weimar’s position elevates the City’s position above PWSA and other ratepayers, and PWSA has not argued “rate shock” from the perspective of non-City customers, who in-part face rate increases due to PWSA foregoing revenue such as this.<sup>214</sup> I&E M.B., p. 40.

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<sup>209</sup> I&E St. No. 3, p. 56.

<sup>210</sup> PWSA St. No. C-1R, p. 20.

<sup>211</sup> PWSA St. No. C-1R, p. 21.

<sup>212</sup> PWSA St. No. C-1R, p. 21.

<sup>213</sup> I&E St. No. 3-SR, p. 27.

<sup>214</sup> PWSA St. No. 3-SR, pp. 27-28.

According to PWSA, the recurring theme underlying all of I&E's positions is that the City is "no different" from any other customer and must be treated the exact same way as soon as possible.<sup>215</sup> PWSA asserts that I&E gives no weight or consideration to the historical relationship of these two entities. The City created PWSA, and still owns the assets (which it leases to the Authority until 2025). Most importantly, in the 1995 Cooperation Agreement with the City (which is in the process of being renegotiated), the City enjoys certain privileges of ownership, including the right to receive up to 600 million gallons of water without charge.<sup>216</sup> Thus, PWSA asserts, the nature of the relationship and the ownership of the assets is a fact that needs to be taken into account when addressing the issues in this proceeding. According to PWSA, I&E also fails to recognize that the City is a governmental body, meaning that it is not like commercial enterprises that are utility customers. Rather than acknowledging that these realities directly impact the ability of PWSA to receive actual payments from the City for services rendered, I&E defaults to claiming that PWSA has not supported its proposals and criticizing PWSA for being overly concerned about the City.<sup>217</sup> PWSA contends that I&E's advocacy, which fails to account for the nature of the relationship between these two entities, must be rejected by the Commission because it offers no realistic way in which to ensure that PWSA will actually receive any payment from the City. PWSA R.B., pp. 7-8.

In contrast, PWSA claims that each one of its proposals creates a pathway to receive some payments now and to move to full payments from the City over time. Importantly, PWSA points out, the City is agreeing to make these payments. According to PWSA, securing the agreement and cooperation of the City (subject to ultimate Commission approval) is a reasonable way to proceed because it will ensure the success of the ultimate goal, i.e., the City will transition to paying fully for services rendered. PWSA argues that demanding – on one hand – that it refuse payment from the City for a portion of meter installation costs while – on

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<sup>215</sup> I&E M.B., p. 36 ("PWSA has not explained why this rationale would not apply to all unmetered properties, not just municipal properties"); 43 ("PWSA should operate on a business-like basis with the City as soon as possible.") and 44 ("PWSA has provided no basis distinguishing why charges related to public fire hydrants should be treated differently than any other water usage by the City.").

<sup>216</sup> See I&E M.B., p. 22.

<sup>217</sup> I&E M.B., p. 41.

the other hand – that PWSA immediately begin seeking payment for water usage makes no sense and does nothing to guarantee that PWSA will receive any payments. There would be little recourse to PWSA from issuing bills to the City that go unpaid given the potential impact of terminating water service to essential governmental services and scores of municipal facilities. Thus, PWSA opines that the end result of adopting I&E’s positions would be to increase PWSA’s uncollectible expense and thrust PWSA and the Commission into protracted legal wrangling, the cost of which all PWSA’s ratepayers will be required to bear. PWSA R.B., p. 8.

I&E characterizes PWSA’s concerns about increasing its uncollectible expense due to a lack of City payments as “troubling and misplaced” because, according to I&E, there is “no evidence that the City would be unable to pay bills” and the “City is a sophisticated entity...fully capable of making the arguments PWSA made on its behalf.”<sup>218</sup> PWSA contends that these claims ignore reality. PWSA R.B., p. 8.

PWSA explains that utilities should be concerned about the ability of their ratepayers to pay because it impacts the revenues that the utilities are able to realistically depend on receiving, which informs utilities about what money will be available to fund operations and infrastructure needs. For a cash flow utility like PWSA, this is even more important because it is solely dependent on revenues received to fund its operations (i.e., PWSA does not have any shareholders or any opportunity to receive a rate of return from ratepayers). In fact, the Commission’s initiatives regarding low income assistance programs are a clear demonstration of the Commission’s desire that utilities consider the ability to pay of their customers. PWSA R.B., pp. 8-9.

According to PWSA, while the City is not a low-income customer, neither is it a “traditional” commercial customer. The City does not, like other private and public companies, engage in the exchange of goods or services for money and does not have shareholders and/or profits available from which to meet payment obligations. Rather, the City is a local governmental body that exists for the purpose of providing public services for its residents and is

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<sup>218</sup> I&E M.B., p. 41.

dependent on paying its financial obligations through taxes and other fees received from its residents. Pittsburgh has only recently in 2018 terminated its status as a financially distressed city under the direction of a state-appointed coordinator under “Act 47.”<sup>219</sup> According to PWSA, this means that imposing what could be a substantial new obligation on the City, essentially without notice or any ability for the City to plan and to incorporate the new financial obligations into its budget, almost certainly will result in an inability of the City to pay, until (or if) it could increase taxes to pay for these totally new charges.<sup>220</sup> Also of importance to remember, PWSA asserts, is that many of the City’s residents are also PWSA’s ratepayers – and many of them are lower or moderate income – meaning that increasing City taxes and fees may directly impact their ability to pay PWSA. PWSA R.B., p. 9.

PWSA contends that recognizing these realities and determining how to work with them to achieve the ultimate goal of ensuring payment for services rendered is not “misplaced” nor unreasonable and most certainly does not – as I&E alleges – evidence a lack of focus by PWSA “on ensuring the integrity of its operations and providing adequate, efficient, safe, reliable and reasonable service.”<sup>221</sup> Rather, PWSA argues, these realities fully support PWSA’s view in this proceeding that the current proposals that have been negotiated between the City and PWSA are a far more reasonable path forward because they reflect an agreement with the City and assure some immediate payments with a plan for transitioning to full payments in the near future (within five years). PWSA R.B., p. 10.

According to PWSA, securing the City’s agreement to begin paying for usage at properties where it has never paid before (whether that property is metered or not) is a complicated issue that needs to be handled in a thoughtful and reasoned manner. As such, directing PWSA to impose a flat rate on City properties immediately will likely result in unpaid charges that PWSA will be unable to collect, leading to an increase in PWSA’s uncollectible

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<sup>219</sup> <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/03/26/with-state-help-pittsburgh-got-its-finances-under-control>.

<sup>220</sup> PWSA M.B., pp. 23, 28; PWSA St. C-1 (Weimar), p. 27; PWSA St. C-1R (Weimar), p. 21.

<sup>221</sup> I&E M.B., p. 41.

expense that all PWSA's ratepayers will be forced to bear.<sup>222</sup> Given the dynamics of the City, its relationship to PWSA and the on-going negotiations of a new Cooperation Agreement that will be subject to Commission review, PWSA has well demonstrated why the Commission must reject I&E's view that simply directing PWSA to issue bills to the City will result in PWSA actually receiving these payments. PWSA R.B., p. 14.

**ii. The OCA's Proposal - Billing Plan for Unmetered and/or Unbilled Municipal Properties within the City of Pittsburgh**

OCA witness Scott J. Rubin offered the following testimony:

. . . I recognize that metering unmetered properties can be a challenge, but that is why flat-rate tariffs exist. I do not take issue with the Authority's plan to take five years to meter all City/non-profit properties, but I am deeply concerned by the Authority's failure to commit to a plan to stop the practice of providing free service while the metering program progresses. That is, the Authority should be required to implement flat-rate billing for each property that is receiving service but is awaiting the installation of a meter.<sup>[223]</sup>

OCA M.B., pp. 12-13.

According to the OCA, the implementation of flat rate billing would recognize that the municipal/non-profit accounts should be paying a rate for the service being provided.<sup>224</sup> The flat rate in PWSA's tariff exists and should be used to ensure that accounts are paying for the service being provided by PWSA. OCA M.B., p. 13.

PWSA's plan is to "ramp up" the charges to the currently unmetered/unbilled City/non-profit customers over a five-year period. PWSA proposes to charge 20% of its typical tariffed rate in 2020, 40% in 2021, 60% in 2022, 80% in 2023, and then full metered rates in

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<sup>222</sup> PWSA M.B., p. 28; PWSA St. C-1R (Weimar), p. 21.

<sup>223</sup> OCA St. 2, pp. 6-7.

<sup>224</sup> 66 Pa.C.S. § 1303.



2024 for the currently unmetered/unbilled City/non-profit customers.<sup>225</sup> Mr. Rubin noted that the proposed rates do not depend on when a meter is installed. For example, if a meter is installed in 2021, the rate that would be charged to that account is 40% of the typical tariffed rate, and if the meter is installed in 2024, the account would be charged the full tariffed rate.<sup>226</sup>

The OCA does not oppose PWSA's transition plan if it is tied to a flat-rate charge that also would ramp up during the five-year transition period. Mr. Rubin explained how that would work:

[I]n 2020 there should be a flat-rate charge based on the size of the service line serving the property that would approximate 20% of the average bill of metered customers with similar-sized service lines. In 2021 the flat rate would increase to 40% of the average bill for similar-sized service lines, and so on. In that way, the transition from unmetered to metered service would be gradual for all properties. It also would provide a path forward that can be built into the budgets of the City and the unmetered non-profit organizations. This approach also means that delays in the physical metering of properties would not seriously impact PWSA's collection of revenues from unmetered customers.<sup>[227]</sup>

OCA M.B., p. 13.

The OCA asserts that its proposal to ramp up the flat rate charge is consistent with PWSA's proposal for the ramp up of the metered rate. In addition, under the OCA's proposed ramp up of the flat rate, the unmetered customers would have a gradual transition to metered service, the costs can be included in future budgets for the City and the non-profits, and revenues would be collected from the unmetered customers during the transition period. OCA M.B., pp. 13-14.

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<sup>225</sup> OCA St. 2, p. 7.

<sup>226</sup> *Id.*

<sup>227</sup> OCA St. 2, pp. 7-8.

The OCA submits that a five-year ramp up plan for a flat rate charge, along with PWSA's proposed five-year ramp up plan for metered rates is a reasonable plan towards compliance and does not require immediate compliance regarding billing for municipal and non-profit entities. The OCA's proposed flat rate ramp up does not speed up the time frame proposed by PWSA for the metered rate ramp up. The OCA's proposal recognizes that a flat rate exists in PWSA's tariff and it can be used, to bridge the gap, in a gradual manner, between no charges and metered charges. OCA R.B., pp. 3-4.

The OCA contends that its proposed ramp-up of flat rate charges for City-owned and non-profit accounts is reasonable and consistent with the requirements of the Public Utility Code and should be adopted. OCA R.B., p. 4.

PWSA contends that the OCA's proposal should be rejected. In addition to the reasons set forth in opposition to the alternate proposal made by I&E in the preceding subsection, PWSA adds the following with respect to the OCA's proposal:

Moreover, while OCA points to the existence of a flat rate in PWSA's Commission-approved tariff, OCA's proposal would still require PWSA to figure out how to estimate usage at unmetered properties to calculate the bill. Such estimates are difficult due to the significant amount of unmetered properties, the presence of numerous derelict properties that will be torn down, the fact that water line size is not necessarily indicative of use and the non-homogeneous nature of municipal buildings.<sup>228</sup> Any methodology that PWSA develops needs to be defensible and equitable. Due to these complexities, and in consideration of the most direct path forward, PWSA's proposed transitional payment plan for all City meters and its commitment to evaluating the proposal for a flat rate for all unmetered and unbilled municipal and governmental

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<sup>228</sup> PWSA M.B., pp. 27-28; PWSA St. C-1 (Weimar), pp. 22, 28.

properties/buildings served by PWSA prior to the next rate case is appropriate.<sup>[229]</sup>

PWSA R.B., pp. 14-15.

**iii. Recommendation - Billing Plan for Unmetered and/or Unbilled Municipal Properties within the City of Pittsburgh**

The undersigned ALJs conclude that PWSA has not met its burden of proving that its transition payment plan or “step-billing” plan is reasonable given the circumstances. Every day the City is unbilled for its water usage is a day PWSA is not collecting tariffed revenue and charging discriminatory rates, violating 66 Pa.C.S. §§ 1303 and 1304. PWSA’s proposal would still allow free water service for unmetered properties. Under PWSA’s proposal, free water service to the City would potentially continue for up to five years. PWSA projects a vast expansion in spending over the next five years,<sup>230</sup> which, as a cash-flow company, is only recoverable from ratepayers. It would be unacceptable to ask non-City ratepayers to foot their full bill for future rate increases while the City is still receiving free water service from PWSA, albeit not as much as in the past. I&E M.B., 42-43.

Implementation of the step-billing proposal would condone and perpetuate the imbalanced, discriminatory relationship the City has with PWSA for longer than necessary, given the circumstances. As discussed in the section above regarding the 1995 Cooperation Agreement, PWSA should operate on a business-like basis with the City as soon as possible. The undersigned ALJs recognize that PWSA’s step-billing proposal is an attempt to correct the legacy of free water provided to the City under the 1995 Cooperation Agreement. However,

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<sup>229</sup> I&E supports the introduction of a flat rate in PWSA’s next base rate case but advocates that it be at minimum the customer charge for the customer’s class. I&E M.B., p. 43. While PWSA is taking this substantive proposal into consideration, there is no need in this proceeding for the Commission to lock PWSA into any specific approach, as permitting PWSA the flexibility to make a proposal based on its analysis and evaluation is the best course. During PWSA’s next rate case, the parties will be free to litigate their positions on the results of PWSA’s evaluation.

<sup>230</sup> See, e.g., PWSA Compliance Plan, Appendix C, PWSA’s LTIIP, p. 42 (PWSA projects approximately a ten-fold increase in capital spending, from about \$30 million in 2017, to a high of \$330 million in 2021).

PWSA’s proposal for the City to continue receiving free water, albeit in gradually reduced form, is unacceptable and unreasonable. I&E M.B., 43.

With respect to the proposal of the OCA for a five-year ramp up plan for a flat rate charge, in addition to PWSA’s five-year transition payment plan, the undersigned ALJs conclude that PWSA’s concerns are valid. The OCA’s proposal would still require PWSA to figure out how to estimate usage at unmetered properties to calculate the bill. Such estimates are difficult due to the significant amount of unmetered properties, the presence of numerous derelict properties that will be torn down, the fact that water line size is not necessarily indicative of use and the non-homogeneous nature of municipal buildings.<sup>231</sup> Any methodology that PWSA develops needs to be defensible and equitable. PWSA M.B., pp. 27-28.

Pursuant to the proposal offered by I&E, the City would still receive up to five years of “lead time” to incorporate the costs of billing into its budgets. Unmetered city facilities would be responsible for a customer charge, but not be responsible for its full meter costs until metering is complete. As reflected in the Partial Settlement, the parties accepted PWSA’s plan that it intends to complete metering of all unmetered municipal and flat rate properties within five years or by December 31, 2024.<sup>232</sup> PWSA’s claim that I&E’s recommendation would create “rate shock” is inaccurate and unsupported by evidence in this proceeding. I&E M.B., p. 42.

I&E’s proposal is a reasonable alternative that accepts that the City may not receive full bills until metering is complete, which could be as late as 2024. However, the City would be charged its full rate once metered, like any other customer. The undersigned ALJs therefore recommend the Commission order PWSA to introduce a flat rate, at minimum the customer charge for the customer’s class, for all unbilled customers in its next base rate case, and as customers are metered their usage should be billed immediately.

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<sup>231</sup> PWSA M.B., pp. 27-28; PWSA St. C-1 (Weimar), pp. 22, 28.

<sup>232</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Stage I*, M-2018-2640802 et al, *Joint Petition for Partial Settlement*, p. 22, ¶¶ III(G)(2)(b)(iii) (September 13, 2019). As advocated by I&E, PWSA also intends to accelerate this timeframe, if possible.

**c. 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>233</sup> I&E opposes any step-billing approach for City public fire hydrant charges and recommends that the Commission direct PWSA to charge the City “the full amount of whatever percent allocation is determined in PWSA’s next rate proceeding.”<sup>234</sup>

PWSA correctly assessed the status of this particular issue at present in its reply brief. While I&E opposes any type of step-billing approach related to City public fire hydrant charges, that approach is not before the Commission at this time. Although the new City Cooperation agreement that is under negotiation with the City would phase-in the public fire hydrant costs similar to the phase-in proposed for City water usage once meters are installed, that agreement needs to be presented to the Commission for review and final approval. Additionally, as agreed to in the Partial Settlement, PWSA’s proposed allocation of costs to the City will be presented as part of its next rate case. As such, approval of the Partial Settlement regarding this issue is all that needs to occur at this time. PWSA R.B., pp. 12-13.

No recommendation to the Commission with respect to this issue is needed at present. Additionally, the undersigned ALJs have recommended approval of the Partial Settlement which includes the requirement for a rate design.

**3. Applicability of the Municipal 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**

PWSA’s Compliance Plan states the following regarding its compliance with 52 Pa.Code § 65.21, 52 Pa.Code § 65.22, and 52 Pa.Code § 65.23:<sup>235</sup>

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<sup>233</sup> Partial Settlement at § III.I.1, p. 19; PWSA St. C-1 (Weimar), p. 31.

<sup>234</sup> PWSA M.B., p. 29.

<sup>235</sup> PWSA Compliance Plan, pp. 67-69.

PWSA does not plan to comply with Section 65.21, and will instead, subject to PUC approval, follow the PWSA Policies and Procedures related to line extensions, as provided in its 2018 Tariff Filing Rules and Regulations and required by the Municipality Authorities Act.

[Regarding Sections 65.22 and 65.23] PWSA's policy on line extensions is detailed in the Rules and Regulations section of its Tariff filing and is consistent with the requirements of the Pennsylvania Municipality Authorities Act.

The Commission directed parties to address the appropriateness of PWSA following the Municipal Authorities Act (MAA) instead of the Code, including whether PWSA's tariff rules and regulations comply with the Code.<sup>236</sup> I&E M.B., p. 46.

Commission regulations require water utilities to include as part of their tariff conditions under which service will be extended to applicants.<sup>237</sup> Further, Commission regulations detail under what circumstances a water utility shall construct line extensions,<sup>238</sup> and rules regarding associated customer advance financing and payments.<sup>239</sup> These regulations do not apply to special utility service.<sup>240</sup> I&E M.B., p. 45.

Line extensions pose a unique problem of reconciling the mandates of the MAA and the regulatory authority of the Commission. PWSA M.B., p. 31. Only two parties addressed this statutory construction issue in their briefs, PWSA and I&E. Both did so extensively.

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<sup>236</sup> Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803, Corrected Technical Staff Directed Questions (November 28, 2018), pp. 9-10.

<sup>237</sup> 52 Pa.Code § 65.21.

<sup>238</sup> *Id.*

<sup>239</sup> 52 Pa.Code § 65.22.

<sup>240</sup> 52 Pa.Code § 65.23. Special utility service is defined as “[r]esidential or business service which exceeds that required for ordinary residential purposes. The term may include installation of facilities such as oversized mains, booster pumps and storage tanks as necessary to provide adequate flows or to meet required pressure criteria and service to large water consuming commercial and industrial facilities.” 52 Pa.Code § 65.1.

**a. PWSA's Position - Applicability of the Municipal 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**

Act 65 establishes that the Public Utility Code shall apply to PWSA in the “same manner as a public utility.”<sup>241</sup> Municipal authorities are entities organized and created, under the MAA, to accomplish certain purposes.<sup>242</sup> PWSA, as a municipal authority,<sup>243</sup> is an independent agency of the Commonwealth<sup>244</sup> and possesses only the powers that the General Assembly has granted to it.<sup>245</sup> PWSA M.B., pp. 30-31.

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

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<sup>241</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>242</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>243</sup> *See, e.g., PWSA St. C-4 (Quigley)*, p. 30.

<sup>244</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.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>245</sup> PWSA St. C-4 (Quigley), p. 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).

municipal authority.<sup>246</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>247</sup> regarding line extensions, customer advance funding, and refunds.<sup>248</sup> According to PWSA, 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>249</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 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>250</sup> with the line extension formula in the Commission's regulations,<sup>251</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>252</sup>) would be complex and costly, according to PWSA,<sup>253</sup> and

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<sup>246</sup> 66 Pa.C.S. §§ 3201, 3202(b), 3208.

<sup>247</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>248</sup> *Id.*; PWSA St. C-4 (Quigley), p. 31.

<sup>249</sup> *Id.*

<sup>250</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), pp. 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>251</sup> 52 Pa.Code §§ 65.1, 65.21-65.22.

<sup>252</sup> PWSA St. C-4 (Quigley), pp. 30, 33; PWSA St. C-4R (Quigley), p. 36.

<sup>253</sup> See PWSA St. C-4R (Quigley), pp. 37-38.



could result in needless litigation and, potentially, damage awards<sup>254</sup> (due to the lack of compliance with the mandates in MAA<sup>255</sup>). PWSA M.B., pp. 31-32.

Accordingly, in response to Directed Questions 44 to 47,<sup>256</sup> PWSA submits<sup>257</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>258</sup> 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. 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. PWSA M.B., pp. 32-33.

PWSA contends that, 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

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<sup>254</sup> PWSA St. C-4R (Quigley), p. 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>255</sup> PWSA St. C-4 (Quigley), p. 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>256</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>257</sup> *See* PWSA St. C-4 (Quigley), p. 34.

<sup>258</sup> 52 Pa.Code §§ 65.1, 65.21-65.22.

fees (or assessments<sup>259</sup>) from those who desire, or are required, to connect to a municipal authority's sewer or water system.<sup>260</sup> Each municipal authority only has the power to charge line extension fees that are consistent with the statutory formula.<sup>261</sup> PWSA M.B., pp. 33-34.

According to PWSA, 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>262</sup> According to PWSA, 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). PWSA M.B., p. 34.

PWSA asserts that 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>263</sup> The

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<sup>259</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 addition to a tapping fee. See 53 Pa.C.S. § 5607(d)(24).

<sup>260</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>261</sup> *Id.*

<sup>262</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>263</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).

MAA specifies the rights and powers of a municipal authority.<sup>264</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 to charge “reasonable and uniform” fees.<sup>265</sup> PWSA contends 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>266</sup> According to PWSA, under general principles of statutory interpretation, those clear words must be given effect.<sup>267</sup> PWSA argues that 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>268</sup> PWSA M.B., pp. 34-35.

According to PWSA, the Public Utility Code 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>269</sup> The Commission also has jurisdiction over the rates<sup>270</sup> and character<sup>271</sup> of public utility service. PWSA contends this means, absent other applicable statutory provisions, the Commission has discretion to define the appropriate amount

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<sup>264</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. ...”

<sup>265</sup> Cf. 53 Pa.C.S. § 5607(d)(9) with § 5607(d)(24).

<sup>266</sup> 53 Pa.C.S. § 5607(d)(24)(iii).

<sup>267</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>268</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>269</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>270</sup> See 66 Pa.C.S. § 1301 (relating to just and reasonable rates).

<sup>271</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).

of line extension fees and the circumstances in which a customer must contribute to an extension of service.<sup>272</sup> PWSA M.B., p. 35.

In 1993, the Commission initiated a rulemaking related to line extensions for all regulated fixed utilities.<sup>273</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>274</sup> The Commission's water line extension regulations are guidance for line extensions in the other utility industries.<sup>275</sup> The Commission's line extension regulations for the electric,<sup>276</sup> natural gas,<sup>277</sup> and telephone<sup>278</sup> industries require that each has a line extension "rule" within their tariff. PWSA M.B., p. 36.

According to PWSA, 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>279</sup> The regulations include an algebraic formula to determine the amount of utility (and ultimately customer) contribution.<sup>280</sup> PWSA explains this is intended to create a fair,

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<sup>272</sup> See *Popowsky v. Pa. Pub. Util. Comm'n*, 853 A.2d 1097 (Pa.Cmwlth. 2004), *affirmed*, 910 A.2d 38 (Pa. 2006).

<sup>273</sup> See *Line Extension Order*, 27 Pa.B. 785, 799 (February 15, 1997) ("*Line Extension Order*").

<sup>274</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>275</sup> See *Line Extension Order*, *supra*.

<sup>276</sup> 52 Pa.Code § 57.19(c).

<sup>277</sup> 52 Pa.Code § 59.27.

<sup>278</sup> 52 Pa.Code § 63.20(b).

<sup>279</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>280</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 require 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.

reasonable and predictable economic standard to eliminate uncertainty and reduce the litigation.<sup>281</sup> PWSA M.B., p. 36.

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>282</sup> and the Commission’s regulations<sup>283</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>284</sup> The actual fees required by those calculations are publicly available.<sup>285</sup> The Commission’s regulations also limit the costs that can be charged to water customers,<sup>286</sup> albeit with a different formula.<sup>287</sup> According to PWSA, the two methods cannot be reconciled. PWSA M.B., p. 37.

PWSA contends there is no conflict or express inconsistency between Section 5607(d)(24) of the MAA and another statute. According to PWSA, 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 Code shall apply to PWSA “in the same

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<sup>281</sup> See *Line Extension Order*, *supra*.

<sup>282</sup> See 53 Pa.C.S. §§ 5607(a), (d), (d)(21)-(24), and (d)(30)-(31).

<sup>283</sup> 52 Pa.Code §§ 65.21, 65.22, 65.23.

<sup>284</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>285</sup> 53 Pa.C.S. § 5607(d)(24)(ii); PWSA Water Tariff at Part III, § G; PWSA Wastewater Tariff at Part III, § G.

<sup>286</sup> The regulations at 52 Pa.Code §§ 65.21, 65.22, 65.23 do not expressly apply to wastewater service.

<sup>287</sup> 52 Pa.Code § 65.21.

manner as a public utility.”<sup>288</sup> PWSA asserts that 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>289</sup> PWSA M.B., pp. 37-38.

According to PWSA, 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>290</sup> of public utilities are to be just and reasonable.<sup>291</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>292</sup> PWSA contends that since the statutory provisions can be read together, there is no conflict or irreconcilable repugnancy between the statutory provisions.<sup>293</sup> PWSA M.B., p. 38.

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<sup>288</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>289</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); *Pa. Pub. Util. Comm’n 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. Pa. Pub. Util. Comm’n*, 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>290</sup> 66 Pa.C.S. § 102 (relating to definition of “rates”).

<sup>291</sup> *See* 66 Pa.C.S. § 1301 (relating to just and reasonable rates).

<sup>292</sup> *See* footnote 267 of PWSA’s M.B.

<sup>293</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 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.).

PWSA argues that, even if there was an irreconcilable conflict between statutory provisions, the specific statutory provisions in the MAA would prevail. According to PWSA, 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>294</sup> Since neither Act 65 nor the Public Utility Code contain specific statutory provisions on line extensions,<sup>295</sup> PWSA contends that the specific language in the MAA prevails over the general statutory language in Act 65 and the Public Utility Code.<sup>296</sup> PWSA M.B., p. 39.

In addition, according to PWSA, Act 65 does not repeal Section 5607(d)(24) of the MAA. Nothing in Act 65 expressly repeals any statute,<sup>297</sup> nor is there an implied repeal of Section 5607(d)(24). PWSA asserts that the well-established principles regarding implied repeal are set forth in the Statutory Construction Act.<sup>298</sup> PWSA contends that the requirements in the Section 1971(c) of the Statutory Construction Act are not satisfied since there is not an

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<sup>294</sup> See 53 Pa.C.S. § 5607(d)(24)(iii).

<sup>295</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>296</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>297</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>298</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).

irreconcilable conflict between statutes embracing the same subject matter (i.e., line extensions).<sup>299</sup> PWSA M.B., pp. 39-40.

PWSA acknowledges that the Public Utility Code now generally applies to PWSA's provision of adequate service at reasonable rates but contends there are exceptions. According to PWSA, 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, PWSA argues that 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>300</sup> or the adequacy, safety and reasonableness of PWSA's services,<sup>301</sup> including extensions thereof, must go to the Commission. PWSA claims 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. PWSA M.B., p. 40.

PWSA contends that Act 65 also does not contemplate that the Commission is free to set rates for PWSA in any way that the Commission chooses. By statute, the General Assembly limited the 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 financial obligations.<sup>302</sup> Second, the General Assembly did not explicitly repeal Section 5607(d)(24) as applied to PWSA. PWSA argues that if the General Assembly had intended for the Commission to act in ways beyond the explicit limits imposed by the statutory

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<sup>299</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>300</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>301</sup> *See, e.g.*, 53 Pa.C.S. §§ 3203(a), 3204(b), 3204(c), 3205 and 3206(c).

<sup>302</sup> 53 Pa.C.S. § 3208(c).



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>303</sup> Since any powers conveyed on PWSA by the City would necessarily have to be consistent with Section 5607(d)(24) of the MAA, PWSA interprets the Act 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. PWSA M.B., pp. 40-41.

According to PWSA, 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>304</sup> or procurement<sup>305</sup> requirements; and/or (b) state-wide environmental laws. PWSA argues that would be an absurd result, which would violate the principles of statutory interpretation<sup>306</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, PWSA opines that the Commission should conclude that the Commission lacks the power to direct PWSA to charge a rate that would violate Section 5607(d)(24). PWSA M.B., pp. 41-42.

PWSA argues that the statutory formulas in Section 5607(d)(24) of the MAA prevail over the formula in the Commission’s regulation for three 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>307</sup> The regulations were

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<sup>303</sup> 66 Pa.C.S. § 3208(a).

<sup>304</sup> See 53 Pa.C.S. §§ 5611, 5612.

<sup>305</sup> Cf. 53 Pa.C.S. § 5614 (Competition in award of contracts) with 66 Pa.C.S. § 513 (Public letting of contracts).

<sup>306</sup> See 1 Pa.C.S. § 1922(1), (2).

<sup>307</sup> See *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa.Super. 2002).

promulgated by the Commission, and, as such, are not a “statute,” as that term is defined in statutory and case law.<sup>308</sup> Statutes always supersede administrative regulations.<sup>309</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>310</sup> Therefore, according to PWSA, any suggestion that the Commission can by regulation supersede provisions in state-wide statutes lacks legal support.<sup>311</sup> PWSA M.B., p. 42.

Second, even if the Commission’s regulation is treated as a statute,<sup>312</sup> PWSA contends that specific statutory provisions in the MAA would prevail. Here, the statutory formula in Section 5607(d)(24) was enacted last<sup>313</sup> and prevails over the formula in the Commission’s regulations.<sup>314</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

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<sup>308</sup> *Id.*; 1 Pa.C.S. § 1991.

<sup>309</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>310</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>311</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>312</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 law. *See, e.g., Marcellus Shale Coalition v. Department of Environmental Protection*, No. 573 M.D. 2016 Opinion issued July 22, 2019; 2019 Pa.Cmwlth. 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>313</sup> *See* footnote 83 (MAA enacted in 2001) and footnote 273 in PWSA’s main brief (regulation promulgated in 1997).

<sup>314</sup> *See* footnote 288 in PWSA’s main brief (regarding 1 Pa.C.S. § 1936, irreconcilable statutes passed by different General Assemblies controls general) and footnote 296 in PWSA’s main brief (regarding 1 Pa.C.S. § 1933, particular controls general). In addition, it would be impossible for an earlier (1997) regulation/provision to repeal/supersede a later (2001) provision. *See* footnotes 298 and 299 of PWSA’s main brief (regarding 1 Pa.C.S. § 1977, implied repeal by later statute).

municipal authorities, it could have done so but 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. PWSA M.B., pp. 42-43.

According to PWSA, the intent of the General Assembly, as stated above, is to have PWSA comply with the applicable provisions of the Public Utility Code.<sup>315</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>316</sup> and PWSA contends there is no such explicit mandate in Chapter 32. PWSA asserts that 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 Chapter 32.<sup>317</sup> In addition, the “Compliance Plan” provision<sup>318</sup> in Chapter 32 does not 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. According to PWSA, 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>319</sup> and the Commission’s regulations may also be waived;<sup>320</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. PWSA M.B., pp. 43-44.

Third, PWSA contends there is no legal support for the contention that the Commission can by regulation change the powers conferred upon municipal authorities by the

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<sup>315</sup> See 53 Pa.C.S. §§ 3202, 3204(b), 3209.

<sup>316</sup> See 53 Pa.C.S. §§ 3202(b), 3204(b), 3208(c).

<sup>317</sup> See 53 Pa.C.S. § 3202(b).

<sup>318</sup> 66 Pa.C.S. § 3204(b).

<sup>319</sup> See 53 Pa.C.S. § 3202(b).

<sup>320</sup> The Commission may waive requirements in its own regulations. See 52 Pa.Code § 1.91.

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>321</sup> According to PWSA, the formula in the Commission’s regulations is not applicable, since fees are specifically (and exclusively) provided for in Section 5607(d)(24). PWSA opines that 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. PWSA M.B., p. 44.

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. PWSA M.B., p. 45.

According to PWSA, the Commission has the authority to waive its own regulation.<sup>322</sup> Moreover, PWSA asserts, the Commission has been granted even more expansive authority to “supersede or waive” any provision of Title 66 at the request of PWSA. PWSA contends that 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. PWSA M.B., p. 45.

PWSA contends that 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>323</sup> and are set forth in PWSA’s current

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<sup>321</sup> 66 Pa.C.S. § 3204(b)(emphasis added).

<sup>322</sup> See 52 Pa.Code § 1.91.

<sup>323</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)

Commission-approved water Tariff.<sup>324</sup> PWSA argues that it follows that the results of the statutory formula are presumed to be reasonable, have the full force of law, and are binding on PWSA and its customers.<sup>325</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. PWSA M.B., pp. 45-46.

According to PWSA, 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. PWSA argues that the 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. PWSA M.B., p. 46.

In addition, the reason for Commission oversight over rates charged by utilities is to prevent utilities from imposing excessive rates. According to PWSA, 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, PWSA concludes that

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<sup>324</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>).

<sup>325</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. *Pa. Pub. Util. Comm'n 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. Pa. Pub. Util. Comm'n*, 470 A.2d 1092, 1096 (Pa.Cmwlth. 1984).

the Commission should either recognize that, in this specific instance, PWSA must continue to apply the exclusive formula for line extension 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. PWSA M.B., pp. 46-47.

**b. I&E's Position - Applicability of the Municipal 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**

PWSA acknowledges the MAA and Commission regulations regarding line extensions cannot be reconciled.<sup>326</sup> In support of its assertion the MAA controls, PWSA states the Public Utility Code does not include specific provisions on line extensions and Commission regulations cannot prevail over a statute.<sup>327</sup> Regarding rules of statutory construction, pitting specific reference to line extensions in the Code or Commission regulations versus the MAA is not the correct analysis, according to I&E.<sup>328</sup> I&E asserts that Chapter 32, a statute, mandates PWSA's compliance with the Code and Commission rules, regulations and orders, and the Code otherwise mandates compliance with Commission regulations. Therefore, I&E opines that PWSA's analysis of whether or not the Code specifically mentions line extensions or whether Commission regulations supersede the MAA independent of Chapter 32 is incorrect and irrelevant. I&E R.B., p. 21.

PWSA further states that, even if it were found that the Code conflicts with MAA,<sup>329</sup> the MAA would prevail.<sup>330</sup> To support its position, PWSA states the rule of statutory construction found at 1 Pa.C.S. § 1933 that specific statutory language prevails over general

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<sup>326</sup> PWSA M.B., pp. 36-37.

<sup>327</sup> PWSA M.B., pp. 35, 42.

<sup>328</sup> I&E M.B., pp. 48-51.

<sup>329</sup> PWSA asserts Act 65 (which added Chapter 32 to the Code) does not explicitly conflict with the MAA. PWSA M.B., p. 37. Therefore, PWSA states the MAA may coexist with the Code as long as it results in just and reasonable rates. PWSA M.B., p. 38.

<sup>330</sup> PWSA M.B., p. 39.

statutory language.<sup>331</sup> However, according to I&E, PWSA omits from its analysis the crucial language at the end of this statute, that the general principle prevails “*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>332</sup> Chapter 32 was passed by the General Assembly after the relevant portions of the MAA, and I&E contends that the General Assembly clearly intended Commission rules, regulations, and orders to apply to PWSA like any other public utility.<sup>333</sup> Therefore, I&E argues the conflict should be viewed in favor of Chapter 32 and Commission regulations. I&E R.B., p. 22.

According to I&E, PWSA appears to contend use of the word “applicable” in Chapter 32 regarding bringing PWSA into compliance with “applicable” Code and Commission mandates means conflicting legal authority supersedes the Code and Commission mandates.<sup>334</sup> I&E asserts this is incorrect and omits key pertinent language. The word “applicable” is used in context to bringing PWSA into compliance with the Code and Commission mandates “applicable to *jurisdictional water and wastewater utilities.*”<sup>335</sup> In other words, the meaning of the word “applicable” in this context is that PWSA needs to comply with mandates for jurisdictional water and wastewater utilities, not with requirements applicable only to gas utilities, electric utilities, etc. “Applicable” does not simply indicate any legal authority to the contrary supersedes the Code. Any conflicting authority should be subject of its own analysis, but for line extensions, Commission regulations regarding line extensions should control. Chapter 32 otherwise authoritatively states the Code “*shall apply to an authority in the same manner as a public utility.*”<sup>336</sup> I&E R.B., pp. 22-23.

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<sup>331</sup> *Id.*

<sup>332</sup> 1 Pa.C.S. § 1933 (emphasis added).

<sup>333</sup> 66 Pa.C.S. § 3202(a)(1); I&E M.B., pp. 48-51. PWSA claims that Section 1971 of the Statutory Construction Act is not satisfied, in part because there is not an irreconcilable conflict between statutes. PWSA M.B., pp. 39-40. Again, as explained above, Chapter 32 does conflict with the MAA.

<sup>334</sup> PWSA M.B., pp. 43-44.

<sup>335</sup> 66 Pa.C.S. § 3204(b) (emphasis added).

<sup>336</sup> 66 Pa.C.S. § 3202 (a) (with limited exceptions regarding Chapters 11 and 21 not relevant here (emphasis added)).

PWSA also contends inclusion of a waiver provision in Chapter 32 supports its assertion that the General Assembly did not mandate compliance with the Code and Commission mandates.<sup>337</sup> I&E disagrees. To the contrary, it is precisely because Chapter 32 requires comprehensive compliance with the Code that the General Assembly included the ability to seek specific waiver. The Code mandates compliance with Commission regulations.<sup>338</sup> According to I&E, PWSA's request for a waiver in its main brief is an untimely and unjustified request that should be rejected. I&E R.B., p. 23.

PWSA also relies heavily on 53 Pa.C.S. § 5607(d)(24) to support its claim that it only has the power to apply "one line extension formula" for customers, i.e., the MAA formula.<sup>339</sup> According to I&E, PWSA's reliance on paragraph (24) is incorrect for several reasons. Paragraph (24) only applies to connection fees, customer facilities fees, and tapping fees, or similar fees. The MAA's rules regarding "line extensions" are found not only at paragraph (24), but also 53 Pa.C.S. §§ 5601(d)(21) – (23), (30) – (31). Although the MAA does not actually use the term "line extension," I&E asserts 53 Pa.C.S. §§ 5607(d)(21) through (23) are the more relevant corollaries to Commission regulations regarding line extensions, i.e., these sections apply to main construction and their financing. As defined by Commission regulations, "line extension" refers to the "addition to the utility's *main* line which is necessary to serve the premises of a customer."<sup>340</sup> 53 Pa.C.S. §§ 5607(d)(21) and (22) address what costs a municipal authority can charge for construction of water and sewer mains, and paragraph (23) discusses financing of line extensions. There is no specific discussion of paragraph (24) type fees in Commission regulations. According to I&E, it is telling PWSA does not specifically assert

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<sup>337</sup> PWSA M.B., p. 43.

<sup>338</sup> See, e.g., 66 Pa.C.S. § 501(c) ("Every public utility...subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof"); 66 Pa.C.S. § 1501 ("[A public utility's] service and facilities shall be in conformity with the regulations and orders of the commission").

<sup>339</sup> PWSA M.B., pp. 31-32.

<sup>340</sup> 52 Pa.Code § 65.1 (emphasis added).



paragraphs (21) through (23) preempt Commission regulations, but only paragraph (24).<sup>341</sup> Any doubt whether 53 Pa.C.S. § 5607(d)(24)(iii) does not apply to paragraphs (21) and (22) is also dispelled by paragraph (24) itself. Specifically, “[Paragraph 24] fees shall be *in addition to* any charges assessed against the property in the construction of a sewer or water main by the authority under paragraphs (21) and (22).”<sup>342</sup> Therefore, I&E contends that any limiting provisions of paragraph (24) are inapplicable to paragraphs (21) and (22). I&E R.B., pp. 23-24.

Nonetheless, I&E asserts PWSA is incorrect that 53 Pa.C.S. § 5607(d)(24)(iii) supersedes Commission regulations.<sup>343</sup> First, the purpose of 53 Pa.C.S. § 5607(d)(24)(iii) is to limit what fees can be charged under the MAA, not to supplant any subsequent legislative directives to the contrary. Second, PWSA appears to believe Chapter 32 simply provides persons questioning the rates and services of PWSA the opportunity to appear before the Commission for the Commission’s determination of consistency with the MAA.<sup>344</sup> This was not the General Assembly’s intention in passing Chapter 32. Chapter 32 clearly mandates PWSA’s compliance with the Code and Commission rules, regulations, and orders, including 52 Pa.Code §§ 65.21 through 65.23.<sup>345</sup> I&E R.B., p. 25.

According to I&E, the express limitations the General Assembly included in Chapter 32 regarding setting rates to comply with PWSA financial obligations and for the City of Pittsburgh “to determine the powers and functions of [PWSA]” does not otherwise indicate the Commission is bound to the MAA’s line extension rules.<sup>346</sup> To the contrary, these limitations demonstrate how the General Assembly included only a few, limited exceptions to its mandate

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<sup>341</sup> Nonetheless, for the reasons explained herein and in Main Brief, I&E asserts any conflict should be read in favor of Chapter 32 and Commission regulations.

<sup>342</sup> 53 Pa.C.S. § 5607(d)(24) (emphasis added).

<sup>343</sup> I&E M.B., pp. 52-53.

<sup>344</sup> PWSA M.B., p. 40.

<sup>345</sup> I&E M.B., pp. 50-51.

<sup>346</sup> See PWSA M.B., pp. 40-41.

that PWSA comply with the Code and Commission rules, regulations, and orders.<sup>347</sup> PWSA argues with broad strokes that if the Commission found its regulations applied here, the Commission could then direct PWSA to no longer comply with other MAA provisions and state wide environmental laws.<sup>348</sup> I&E contends this argument is hyperbolic and not what the Commission is being asked to decide here. The limited issue here is whether Chapter 32 and the Commission’s line extension regulations supersede the MAA provisions regarding line extensions. According to I&E, any other potential conflict will need to be subject to its own independent analysis. I&E R.B., pp. 25-26.

PWSA cites concerns of “litigation and potential damage awards before the courts” should it comply with Commission line extension regulations.<sup>349</sup> First, PWSA did not address this claim in testimony and it is inappropriate to now bring it up for the first time in briefing when no investigation is possible. Second, PWSA’s concerns are not valid reasons to forego enforcement of Commission regulations. PWSA is generally reordering its business operations to comply with the Code and Commission regulations. According to I&E, customers must comply with the law and fear of meritless litigation is not valid grounds for avoiding compliance with Chapter 32. Additionally, PWSA customers are on notice that its tariff provisions regarding line extensions may change. Specifically, PWSA’s current water and wastewater tariffs expressly state its current MAA-compliant line extension provisions are subject to change based on this compliance plan proceeding.<sup>350</sup> I&E R.B., p. 26.

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<sup>347</sup> I&E M.B., p. 51. I&E avers the General Assembly did not intend for its reservation to the City of Pittsburgh “to determine the powers and functions of [PWSA]” to mean the City can decide whether or how PWSA shall comply with the Code and Commission mandates. Such a reading would be absurd and unreasonable considering the entire purpose of Chapter 32 was to bring PWSA under Commission jurisdiction. *See* 1 Pa.C.S. § 1922 (“In ascertaining the intention of the General Assembly in enactment of a statute the following presumptions, among others, may be use: (1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.”)

<sup>348</sup> PWSA M.B., pp. 41-42.

<sup>349</sup> PWSA M.B., p. 35.

<sup>350</sup> Water Tariff, Part III, Section G; Wastewater Tariff, Part III, Section G

Last, PWSA requests that even if the Commission finds PWSA must follow Commission regulations for line extensions, it should waive these regulations to permit PWSA to use Section 5607(d)(24) of the MAA. I&E objects to PWSA's request. First, nowhere in the Compliance Plan or otherwise in the record did PWSA indicate it would seek such a waiver. Therefore, this request is untimely and the Commission should reject this request on this basis alone. Parties have had no opportunity to develop the record regarding the prudence of this request. Unlike the legal question of whether Commission regulations or the MAA controls regarding line extensions, I&E asserts such a waiver request should be supported on a factual basis. For instance, PWSA claims that the Commission's regulations place a larger burden on the utility,<sup>351</sup> but the accuracy of this claim has no basis in the record. Because PWSA was presenting the issue as a pure legal conflict question, rather than the prudence of waiving regulations, I&E did not have an opportunity to evaluate this new proposal. Second, as explained in I&E's Main Brief, PWSA's claimed hardships in changing its systems is not a valid basis to abandon compliance with Chapter 32.<sup>352</sup> PWSA does and will continue to face many challenges coming under the Commission's jurisdiction. This should be expected for any utility transitioning its practices from one legal jurisdiction to another. However, these challenges should not by themselves serve as a basis to waive Commission regulations in the context of this Compliance Plan proceeding. Last, the fact that PWSA's current tariff includes line extension provisions reflecting the MAA is not significant. As mentioned above, its tariffs include terms stating the current line extensions provisions may change based on the results of this Compliance Plan proceeding. For all the foregoing reasons, I&E argues the Commission should order PWSA to revise its tariff provisions regarding line extensions to comply with 52 Pa.Code §§ 65.21-65.23. I&E R.B., pp. 26-27.

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<sup>351</sup> PWSA M.B., p. 46.

<sup>352</sup> I&E M.B., pp. 55-56.

**c. Recommendation - Applicability of the Municipal 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**

PWSA cannot be in compliance with the MAA and Commission regulations regarding line extensions at the same time. Therefore, it is necessary to look to the rules of statutory construction to determine whether the MAA or the Code and Commission regulations control.<sup>353</sup> At the outset, if the conflict was viewed simply as a regulation versus statute, the MAA would prevail.<sup>354</sup> However, the undersigned ALJs conclude this is not the correct analysis. The correct analysis is whether a newly enacted statute, i.e., Chapter 32 of the Public Utility Code, requires PWSA to follow Commission regulations regarding line extensions, instead of the MAA. I&E M.B., p. 48.

The conflict is as follows. The MAA, a statute, provides specific rules regarding line extensions. Chapter 32, also a statute, mandates PWSA comply with the Code generally. Compliance with the Code generally includes compliance with Commission regulations,<sup>355</sup> and Commission regulations include specific rules regarding line extensions. I&E M.B., p. 49.

Rules of statutory construction require that, whenever a general provision in a statute is in conflict with a special provision in the same or another statute, both provisions should be construed to be operable, if possible.<sup>356</sup> Here, it is not possible for the MAA, which includes special provisions regarding line extensions, to coexist with Chapter 32, a general provision, which requires PWSA to follow Commission regulations related to line extensions. Rules of statutory construction further provide that if the two provisions are irreconcilable, as

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<sup>353</sup> 1 Pa.C.S. §§ 1501-1991.

<sup>354</sup> *See, e.g., Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa.Super. 2002).

<sup>355</sup> *See, e.g.,* 66 Pa.C.S. § 501(c) (“Every public utility...subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof”); 66 Pa.C.S. § 1501 (“[A public utility’s] service and facilities shall be in conformity with the regulations and orders of the commission”).

<sup>356</sup> 1 Pa.C.S. § 1933.

they are here, the special provision shall prevail to the exclusion of the general provision, unless the general provision was (1) enacted later and (2) it is the manifest intention of the General Assembly that such general provision shall prevail. Here, the undersigned ALJs conclude both elements necessary for an exception to the rule are satisfied. Chapter 32 was enacted later than the applicable provisions of the MAA, and the legislature expressly prescribed that the Public Utility Code, including associated Commission regulations, apply to PWSA. I&E M.B., p. 49.

The first element is satisfied. The MAA was enacted in 1945 and first amended to allow municipal authorities to recoup costs of sewer line extensions and associated fees in 1947.<sup>357</sup> MAA rules regarding line extensions were amended multiple times thereafter, but Sections (d)(21) through (24), and (d)(30) through (31) of the MAA have been identical to the current version of the MAA, with one exception, inapplicable to PWSA, since 2013.<sup>358</sup> The current version of the MAA regarding line extensions was enacted on July 7, 2017, when Governor Wolf signed Act 19 of 2017 into law. Chapter 32 of the Code was enacted later than any of the above dates, on December 21, 2017, when Governor Wolf signed Act 65 of 2017 into law. I&E M.B., p. 50.

Regarding the second element, although Chapter 32 does not specifically reference line extensions, the undersigned ALJs conclude that the General Assembly intended for the Code and Commission's rules, regulations and orders to apply to PWSA the same as any other Commission-regulated utility, barring a few, limited exceptions. Section 3202 of the Code states:

Beginning on April 1, 2018, unless otherwise provided in this chapter, *the provisions of this title*, except Chapters 11 (relating to certificates of public convenience) and 21 (relating to relations

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<sup>357</sup> Act of June 12, 1947 (P.L. 571, No. 249).

<sup>358</sup> The current statute provides certain refunds of tapping fees if facilities have not been placed into service within 20 years, compared to 15 years under the prior version of the statute. 53 Pa.C.S. § 5607(d)(24)(i)(C)(VI)(b). This provision only applies to an authority which provides service to five or more municipalities.

with affiliated interests), *shall apply to an authority in the same manner as a public utility.*

66 Pa.C.S. § 3202(a)(1) (emphasis added).

Chapters 11 and 21 of the Code are not relevant to the line extensions rules under 52 Pa.Code §§ 65.21-65.23. Additionally, the Code requires compliance with Commission regulations.<sup>359</sup> Section 3204 of Chapter 32 also demonstrates the General Assembly’s intention to place PWSA under full Commission jurisdiction, e.g., subject not only to the Code, but also the rules, regulation and orders of the Commission. Specifically, Section 3204 mandates this Compliance Plan proceeding’s entire purpose is to bring PWSA’s operations into compliance with the same requirements applicable to jurisdictional water and wastewater utilities under the Code and applicable rules, regulations and orders of the commission.<sup>360</sup> Additionally, the General Assembly could have expressly limited the Code’s applicability regarding line extensions, but did not do so. To the contrary, in addition to Chapters 11 and 21, Chapter 32 limits only the Code’s applicability to establishment of authorities, audits, and compliance with certain financial obligations.<sup>361</sup> Considering all the above, the undersigned ALJs conclude that the General Assembly clearly and expressly intended to require PWSA to comply with the Code and associated Commission rules, regulations, and orders, barring a few, limited exceptions. I&E M.B., pp. 50-51.

PWSA contends that use of the word “applicable” in Chapter 32 regarding bringing PWSA into compliance with “applicable” Code and Commission mandates means conflicting legal authority supersedes the Code and Commission mandates.<sup>362</sup> This assertion is

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<sup>359</sup> See, e.g., 66 Pa.C.S. § 501(c) (“Every public utility...subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof”); 66 Pa.C.S. § 1501 (“[A public utility’s] service and facilities shall be in conformity with the regulations and orders of the commission”)

<sup>360</sup> 66 Pa.C.S. § 3204(b).

<sup>361</sup> 66 Pa.C.S. § 3208.

<sup>362</sup> PWSA M.B., pp. 43-44.

incorrect and omits key pertinent language. The word “applicable” is used in context to bringing PWSA into compliance with the Code and Commission mandates “applicable to *jurisdictional water and wastewater utilities*.”<sup>363</sup> In other words, the meaning of the word “applicable” in this context is that PWSA needs to comply with mandates for jurisdictional water and wastewater utilities, not with requirements applicable only to gas utilities, electric utilities, etc. “Applicable” does not simply indicate any legal authority to the contrary supersedes the Code. Any conflicting authority should be subject of its own analysis, but for line extensions, the Code and Commission regulations regarding line extensions should control. Chapter 32 otherwise authoritatively states the Code “*shall apply* to an authority in the same manner as a public utility.”<sup>364</sup> I&E R.B., pp. 22-23.

PWSA requests that even if the Commission finds PWSA must follow the Code and Commission regulations for line extensions, it should waive the Commission regulations to permit PWSA to use Section 5607(d)(24) of the MAA. I&E objected to PWSA’s request. The undersigned ALJs conclude that PWSA’s request for a waiver of the regulations is untimely and further conclude that a factual record would be necessary to appropriately consider such a request.

Nowhere in the Compliance Plan or otherwise in the record did PWSA indicate it would seek such a waiver. Therefore, this request is untimely. In addition, the parties have had no opportunity to develop the record regarding the prudence of this request. Unlike the legal question of whether the Code and Commission regulations or the MAA controls regarding line extensions, such a waiver request should be supported on a factual basis.

The undersigned ALJs recommend that the Commission should order PWSA to revise its tariff provisions regarding line extensions to comply with 52 Pa.Code §§ 65.21-65.23.

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<sup>363</sup> 66 Pa.C.S. § 3204(b) (emphasis added).

<sup>364</sup> 66 Pa.C.S. § 3202(a) (emphasis added) (with limited exceptions regarding Chapters 11 and 21 not relevant here).

#### **4. PWSA's Residency Requirement**

##### **a. PWSA's Position on Residency Requirement**

In the Directed Questions, 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 Questions also directed the parties to discuss how this requirement is consistent with PWSA's safety and reliability obligations under Section 1501 of the Code and the diversity objectives of the "Diversity at Major Jurisdictional Utility Companies-Statement of Policy."<sup>365</sup> The Directed Questions on the residency requirement were answered by the Authority's Chief Corporate Counsel and Chief of Administration, Debbie M. Lestitian, who has a Juris Doctorate and a bachelors in accounting. Witness Lestitian also served as Chief of Administration and Human Resources and Director of Human Resources for the City of Pittsburgh from 2014 through 2018.<sup>366</sup>

Witness Lestitian explained that 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 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>367</sup>

With respect to safety and reliability obligations, PWSA submits that the Authority is well aware that Section 1501 of the 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

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<sup>365</sup> 52 Pa.Code §§ 69.801-69.809.

<sup>366</sup> PWSA St. C-2 (Lestitian), p.1.

<sup>367</sup> *Id.* at 14.



patrons, employees and the public.<sup>368</sup> Further, such service is required to be reasonably continuous and without unreasonable interruptions or delay.<sup>369</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>370</sup>

PWSA contends that the residency requirement makes it challenging to meet these obligations.<sup>371</sup> While PWSA has many dedicated and qualified staff members and takes efforts to train new staff in the necessary areas of expertise, PWSA asserts that the domicile requirements restrict the Authority's ability to attract and retain capable and talented individuals with the necessary skills, as well as PWSA's ability to fulfill diversity goals. According to PWSA, the domicile requirement is problematic because 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.<sup>372</sup>

PWSA also claims that 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.<sup>373</sup> PWSA further claims that the Authority engages specialty contractors to address everyday maintenance and operational needs. According to PWSA these contractors comprise more than 10% of PWSA and are engaged to work with PWSA staff at a 150% to 200% cost premium. PWSA asserts that the cost premium has added more than \$2 million per year just to PWSA's annual

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<sup>368</sup> PWSA M.B., p. 47.

<sup>369</sup> 66 Pa.C.S. § 1501; PWSA St. C-2 (Lestitian), p. 14.

<sup>370</sup> 66 Pa.Code §§ 69.801-69.809.

<sup>371</sup> PWSA M.B., p. 48.

<sup>372</sup> PWSA St. C-2 (Lestitian) pp. 15-16.

<sup>373</sup> PWSA M.B., p. 48

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. Nonetheless, PWSA submits the Authority 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.<sup>374</sup>

PWSA notes that I&E has recommended that PWSA eliminate the residency requirement, citing concerns about PWSA's obligations as a regulated public utility.<sup>375</sup> However, PWSA asserts that I&E has pointed to no 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. PWSA argues that under long-standing precedent, the Commission may not act as a "super board" of directors<sup>376</sup> or micromanage the day-to-day operations of the utilities under its jurisdiction.<sup>377</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>378</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.

#### **b. I&E's Position on Residency Requirement**

Only I&E challenges PWSA's residency requirement. I&E argues that in the face

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<sup>374</sup> PWSA M.B., p. 49.

<sup>375</sup> I&E St. 2 (Patel), pp. 36-41.

<sup>376</sup> See *Bell Tel. Co. of Penna. v. Driscoll*, 118 A.2d 912, 916 (Pa. 1941); *Metropolitan Edison Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 76 (Pa.Cmwlth. 1981).

<sup>377</sup> See *Pa. Pub. Util. Comm'n v. Philadelphia Electric Co.*, 501 Pa. 153, 159, 460 A.2d 734 (1983).

<sup>378</sup> FIO, p. 17.

of a choice between operating efficiently, cost-effectively, and in conformance with its compliance obligations, or placating the City by continuing to enforce a City residency requirement that harms its operations, PWSA unfathomably chooses the latter.<sup>379</sup> I&E submits that PWSA’s proposal to continue enforcing its residency requirement, even as its Main Brief acknowledges that the requirements “makes it challenging to meet its obligations under the Public Utility Code”<sup>380</sup> exemplifies PWSA’s apparent unwillingness or inability to put its operations above City interests. The Commission must reject PWSA’s proposal and order it to revise its Compliance Plan to eliminate the residency requirement.

In its Main Brief, I&E explained the politically-motivated genesis of PWSA Board’s adoption of the residency requirement,<sup>381</sup> which, notably, PWSA does not allege to provide any benefit to its operations or to its ratepayers. Instead, among other things, PWSA has previously admitted that its residency requirement results in increased costs, challenges its ability to hire skilled and necessary employees, and compromises its ability to pursue diversity goals. Specifically, PWSA admits that the cost premium for contractors that it must hire to circumvent the residency requirement is estimated to be 150% to 200%, which equates to an addition of more than \$2 million in annual costs to PWSA’s non-unionized workforce.<sup>382</sup> Additionally, PWSA indicates that the residency requirement has thwarted its ability to hire qualified water treatment operators, plumbers, laboratory staff, project managers, welders, electricians, and mechanics who are necessary to address its everyday maintenance and operational needs.<sup>383</sup> Finally, PWSA claimed that its residency requirement hinders its ability to achieve the Commission’s policy goals for diversity at 52 Pa.Code §§ 69.801-69.809.<sup>384</sup>

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<sup>379</sup> I&E R.B., p. 28.

<sup>380</sup> PWSA M. B., p. 12.

<sup>381</sup> I&E M. B., pp. 58, 60.

<sup>382</sup> I&E M. B., pp. 62-63; I&E Ex. No. 2, Sch. 7, p. 2.

<sup>383</sup> I&E M. B., pp. 63-65; I&E St. No. 2, p. 38; I&E Ex. No. 2, Sch. 7, p. 2.

<sup>384</sup> PWSA St. No. C-2, p. 15.

In its Main Brief, PWSA erroneously claims that I&E has not linked its residency requirement with non-compliance of the Code, or Commission regulations, although I&E contends it has clearly demonstrated such non-compliance.<sup>385</sup> More specifically, I&E contends that it demonstrated violations of Section 1501<sup>386</sup> and 1301<sup>387</sup> of the Code, and frustration of the Commission's diversity policy goals at 52 Pa.Code §§ 69.801-69.809,<sup>388</sup> for the following reasons: (1) PWSA's residency requirement frustrates its ability to hire skilled employees who are necessary to address its everyday maintenance and operational needs, resulting in a violation of Section 1501<sup>389</sup> of the Code which requires utilities to furnish and maintain adequate, efficient, safe, and reasonable service;<sup>390</sup> (2) by producing at least an estimated \$2 million annually in increased costs without adding any added value to PWSA or its ratepayers, PWSA's residency requirement violates Section 1301 of the Code which requires PWSA to charge only just and reasonable rates;<sup>391</sup> (3) PWSA's residency requirement frustrates its ability to achieve the diversity goals articulated in the Commission's Policy Statement at 52 Pa.Code §§ 69.801-69.809, because its candidate pool is artificially limited.<sup>392</sup>

I&E submits that the uncontroverted evidence proves that PWSA's residency requirement produces a result that violates the Code, frustrates diversity goals, and that challenges its ability to provide adequate, efficient, safe, reliable and reasonable service to its ratepayers. Because it is unable to refute the evidence, PWSA instead attempts to support its residency requirement as being within its Board's managerial discretion. According to PWSA, its decision to enforce the residency requirement is the type of utility decision that should not be

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<sup>385</sup> PWSA M. B., pp. 49-50.

<sup>386</sup> 66 Pa.C.S. § 1501.

<sup>387</sup> 66 Pa.C.S. § 1301.

<sup>388</sup> I&E M.B., pp. 65-67; 52 Pa.Code §§ 69.801- 69.809.

<sup>389</sup> 66 Pa.C.S. § 1501.

<sup>390</sup> I&E M.B., pp. 63-65.

<sup>391</sup> I&E M.B., pp. 62-63.

<sup>392</sup> I&E Main Brief, pp. 65-67.

subject to the Commission's micromanagement when the utility exercises reasonable judgment in choosing how it will meet its statutory and other legal obligations.

I&E asserts that the fatal flaw in PWSA's argument is that the evidence proves its adoption of the residency requirement is completely antithetical to meeting its statutory and other legal obligations. PWSA completely ignores the Commission's clear authority and obligation to enforce the Code and its regulations, which as explained above, prohibit results that PWSA's residency requirement is proven to produce, I&E argues. Furthermore, I&E asserts the fact that PWSA's Board views the residency requirement as a management decision is of no consequence here because the Commission previously determined that it "will not defer to PWSA Board decisions as to compliance with the Public Utility Code (including Chapter 32) or Commission regulations."<sup>393</sup> Instead, the Commission expects PWSA's "ultimate end-state compliance" with the Code and Commission regulations,<sup>394</sup> and because PWSA's residency requirement prohibits that outcome, the Commission must order PWSA to revise its Compliance Plan to eliminate the requirement.<sup>395</sup>

**c. PWSA's Response to I&E Position on Residency Requirement**

PWSA has acknowledged that the residency requirement makes it challenging to fulfill its obligations under the Public Utility Code. However, PWSA also explained the steps it is taking to address these challenges. Those measures include efforts to stabilize the workforce through the hiring of permanent workers, engaging consultants, and temporarily hiring project managers who do not reside in the City and seeking to convert them to permanent employees (i.e., having individuals establish domicile within the City limits within 6 months). Also, under PWSA's domicile policy, the Executive Committee can exempt employees from this requirement.<sup>396</sup>

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<sup>393</sup> *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, M-2018-264802 et al, Final Implementation Order, pp. 17-18 (entered on March 15, 2018).

<sup>394</sup> *Id.* at 33.

<sup>395</sup> I&E R.B., p. 31.

<sup>396</sup> PWSA M.B., pp. 47-49.

I&E contends that the residency requirement hinders PWSA's ability to comply with its obligations under the Code, Commission regulations and orders. Therefore, I&E recommends that the Commission direct its elimination.<sup>397</sup>

As PWSA has previously noted, the Commission's ability to eliminate the residency requirement is limited to situations in which it determines that PWSA's policy is causing it to be out of compliance with the Public Utility Code or Commission regulations by providing inadequate service or tending to make PWSA's rates unreasonably high. Only if the Commission finds that the residency requirement is causing PWSA to be out of compliance with a statutory provision or regulation is it empowered to direct its elimination. PWSA concedes that the record here supports a Commission finding that the residency requirement is increasing costs to PWSA and impeding its ability to provide adequate and efficient service.

**e. Recommendation — Residency Requirement**

The undersigned ALJs recommend that the Commission decide it lacks the power to interfere with PWSA's residency requirement, which is determined by the Authority's governing body. The ruling in *Metropolitan Edison Company v. Pa. Pub. Util. Comm'n*, 62 Pa.Cmwlth. 460, 437 A.2d 76 (1981) (*Metropolitan Edison*) lends guidance on this issue. The Commonwealth court opined as follows.

The Commission's authority to interfere in the internal management of a utility company is limited. *See, e. g., Bell Telephone Co. of Pennsylvania v. Driscoll*, 343 Pa. 109, 21 A.2d 912 (1941); *Northern Pennsylvania Power Co. v. Pennsylvania Public Utility Commission*, 333 Pa. 265, 5 A.2d 133 (1939); *Coplay Cement Manufacturing Co. v. Public Service Commission*, 271 Pa. 58, 114 A. 649 (1921). The Commission is not empowered to act as a super board of directors \*467 for the public utility companies of this state. *Northern Pennsylvania Power Co., supra*. Concerning a utility company's right of self-management, our state Supreme Court in the Coplay Cement case said: (T)he company manages its own affairs to the fullest extent consistent with the protection of the public's interest,

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<sup>397</sup> I&E M.B., pp. 57-67.

and only as to such matters is the commission authorized to intervene, and then only for the special purposes mentioned in the act. (Emphasis in original.) 271 Pa. at 62, 114 A. at 650.

. . . . Recognizing the Commission's duty to the public and a utility's right of self-management, our courts adopted the further proposition that it is not within the province of the Commission to interfere with the management of a utility unless an abuse of discretion or arbitrary action by the utility has been shown. *Lower Chichester Township v. Pennsylvania Public Utility Commission*, 180 Pa.Super. 503, 511, 119 A.2d 674, 678 (1956); *Pittsburgh v. Pennsylvania Public Utility Commission*, 173 Pa.Super. 87, 92, 95 A.2d 555, 558 (1953); see *Pennsylvania R. R. v. Pennsylvania Public Utility Commission*, 396 Pa. 34, 40, 152 A.2d 442, 425 (1959); *Bell Telephone Co. of Pennsylvania v. Pennsylvania Public Utility Commission*, 17 Pa.Cmwlth. 333, 339-40, 331 A.2d 572, 575 (1975). An obvious corollary of the above proposition is that if there has been an abuse of managerial discretion, and the public interest has been adversely affected thereby, then the Commission is empowered to intervene.

*Metropolitan Edison*, 62 Pa.Cmwlth. at 466-467, 437 A.2d at 80.

PWSA's residency requirement is essentially a management decision. PWSA's business or management decision to hire from within the territory that it serves does not contravene the Public Utility Code or a Commission regulation or order. Nor can the residency requirement be deemed arbitrary. Requiring workers to reside in the territory served by PWSA may provide ready access to workers in case of an emergency such as a water main break on a freezing night in Pittsburgh; or the resident workers may be more invested in the issues confronted by the Authority; or in the case of diversity the Authority may wish for the workforce to look like the community it serves.

While PWSA acknowledges the Authority's residency requirement makes it challenging to meet its workforce obligations, a challenge does not translate into a violation of the Public Utility Code. Although I&E at the core of its argument contends PWSA's residency requirement frustrates the Authority's compliance with the Public Utility Code, a frustration does not constitute a violation of the Code.

Considering the above analysis, the undersigned ALJs recommend that the Commission decide it lacks the authority to alter PWSA's residency requirement.

## 5. Lead Remediation Issues

### **Harmful Effects of Lead Exposure**

There is no dispute that lead in a utility's water supply is harmful and presents an unsafe condition in contravention of the reasonable service requirement of Section 1501 of the Code. There also is no dispute that PWSA has water mains containing lead and there are customers with lead service lines.<sup>398</sup>

UNITED's witness, Bruce Lanphear (Dr. Lanphear), explained the harmful effects of lead exposure.<sup>399</sup>

Lead is toxic to the central nervous and cardiovascular system. It damages numerous organ systems and causes permanent, irreversible injuries to children's developing brains. Even at low levels of exposure, lead is harmful to both children and adults. There is no safe level of exposure to lead.

Lead can pass from a mother's lead stores and blood to her unborn baby, increasing the risk that the baby will be born too early or too small. Lead exposure has also been associated with an increased incidence of miscarriages and delays in the time to achieve pregnancy. One case control study showed that the odds of miscarriage nearly doubled for every 5 micrograms per deciliter ( $\mu\text{g/dL}$ ) increase in maternal blood lead concentration.

Childhood lead exposure has been associated with a wide array of irreversible neuropsychological and developmental effects. Increased blood lead levels can result in lower IQs, diminished academic achievement, increased risk of attention-related disorders, and increased risk of problem behaviors, like conduct disorder. These associations occur even at low blood levels (below 5  $\mu\text{g/dL}$ ). Blood lead levels of 10  $\mu\text{g/dL}$  and lower are also associated with stunted growth and impaired hearing.

Childhood lead exposure can have lifelong effects. Children with elevated blood lead levels may never reach the same peak cognitive ability later in life as

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<sup>398</sup> I&E's M.B., 82-83.

<sup>399</sup> UNITED's witness is a professor and medical doctor with specialties in general preventative medicine and public health. He has conducted extensive research in lead exposure and lead poisoning. *See* UNITED's St-3 (Revised) at 1-2.



children with lower exposure to lead. There is some evidence that lead exposure is a risk factor for developing Alzheimer's disease.

Adults exposed to lead can also experience adverse health impacts. Chronic lead exposure in adults can result in increased blood pressure (or hypertension) and chronic kidney disease. Adult lead exposure has been associated with increased risk of cardiovascular problems, decreased cognitive function, and increased incidence of tremors.

In sum, the scientific evidence confirms that there is no safe level of lead exposure, and that blood lead level reference values used by public-health agencies and organizations—such as EPA's [U.S. Environmental Protection Agency] action level . . . —should not be interpreted as establishing a safe, health-based level of lead exposure. Even low levels of lead exposure can cause death from cardiovascular disease and diminish IQ levels. These risks increase sharply with increased lead exposure.

UNITED's St-3 (Revised), pp. 8-9 (footnotes in original omitted).

The Pennsylvania Department of Environmental Protection's (PADEP or DEP) regulation at 25 Pa.Code § 109.1102(a) (which mirrors the federal regulation) 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. The DEP 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)(1). The DEP 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. 25 Pa.Code § 109.1107(d)(2). Under 25 Pa.Code § 109.1107(d)(4) of the DEP's regulations, a water supplier is required to replace the system owned portion of the lead service line.

### **PWSA's 2018 Lead Remediation Program**

Recognizing PWSA's lead problems, the Commission issued the March 15, 2018 Final Implementation Order (FIO), which directed PWSA to outline a plan to remediate lead

levels in the water supply and to address the replacement of lead service lines. In response to this directive, PWSA proffered in its September 28, 2018 Compliance Plan (CP) as follows:

There is no detectable lead in the Pittsburgh Water and Sewer Authority's water when it leaves the treatment plant and travels through the PWSA's water mains. However, lead can enter drinking water through lead service lines and household plumbing. PWSA budgeted \$44 million to replace 2,100 lead service lines in Pittsburgh in 2018 as part of an agreement with PADEP. PWSA has replaced 1,341 service lines as required by the PADEP order, signed in November 2017. An additional 885 lines will be replaced by December 2018, as required by the PADEP Consent Order.

PWSA counts about 71,000 total residential service line connections system-wide, and PADEP expects the Authority to inventory them all – and identify all the lead ones – by Dec. 31, 2020. PWSA is also finalizing the implementation of an orthophosphate treatment to manage lead corrosion throughout the system, which has been approved by the PADEP.

PWSA is in the process of identifying and removing lead service lines in the public right of way; that is, from the water main to approximately the edge of a customer's property as demarcated by a curb stop valve. It is also removing lead service lines on the private portion of customers' properties, as part of an interim program that will last through at least 2019. As detailed in the LTIP, the lead service line replacement (LSLR) program will be authorized and funded (at an accelerated rate) in 2019. PWSA submitted an application to the Pennsylvania Infrastructure Investment Authority (PENNVEST) for \$50 million in funding for a LSLR program in 2019. Beyond 2019, it is unclear whether the program will be authorized and fully funded. PWSA has the continuing need to invest in its systems to replace lead service lines and other aging infrastructure to ensure water quality, safety, reliability and customer-service levels. PWSA's Lead program is projected to replace roughly 15 to 20 lead service lines per day until year end. PWSA intends to keep replacing the public side of lead service lines even if lead levels plunge - as intended - with the introduction of an orthophosphate passivating agent at the Aspinwall water treatment expected in Fall/Winter 2018. In addition, the number of miles of main replacement per year under annual small diameter water main replacement (SDWMR) program is being accelerated with the goal of eliminating all lead service lines from the system by 2026, as shown in Tables 2-7 and 2-8 of the LTIP.

PWSA has free lead test kits available to all PWSA drinking water customers. Samples from the tests are then sent to an independent laboratory, and the results are provided directly to customers.

CP pp. 119-120 [footnotes in original omitted].

### **Secretarial Directives to PWSA**

The November 28, 2018 Secretarial Letter directed PWSA and the parties, in part, to address the following.<sup>400</sup>

Regarding PWSA's outlined plan to continue lead service line replacements, parties should discuss:

97. PWSA's continued funding of the replacement program beyond 2019.
98. The reasonableness of PWSA's private lead line replacement plan considering the recent October 17, 2018 PENNVEST loan and grant awarded to PWSA.
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.<sup>401</sup>
100. Whether the PWSA lead line replacement policy of limiting replacements to single-family residential properties with service lines of 1-inch or less is consistent with 66 Pa.C.S. § 1501.
101. The relationship between the replacement program for customer-owned lead service lines and the potential implementation of a DSIC mechanism.

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<sup>400</sup> For clarity and consistency, PWSA's Sequential Numbering of the Directed Questions Listed in the PUC Technical Staff Initial Report and Direct Questions (Stage 1), dated November 28, 2018 (Corrected) is used in this decision. *See* PWSA St. 1, Exh. RAW/C-1.

<sup>401</sup> Section 1304 provides in relevant part as follows:

No public utility shall, as to rates make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as rates, either as between localities or as between classes of service.

### **PWSA's Updated Lead Remediation Program**

On February 1, 2019, PWSA filed the Authority's Compliance Plan Supplement, which revised the initial CP. *See* PWSA Hearing Exh. 2, pp. 4-8. Under the CP Supplement, some of the revisions updated the Lead Remediation Program as follows.

PWSA will receive approximately \$49 million (in grants and a loan) from PENNVEST to replace lead service lines in 2019 and into 2020. PWSA filed an Abbreviated Securities Certificate, on January 16, 2019, related to the loan from PENNVEST. *See* PUC Docket No. S-2019-3007162. Closing with PENNVEST is scheduled for March 2019. With these funds, PWSA expects to replace approximately 3,400 public-side lead service lines and 2,800 private-side lead service lines in several neighborhoods, including Morningside, Homewood, Perry, Mt. Washington, Southside, Northside and Greenfield.

With respect to the lead service line replacement and lead remediation program and activities, and in accordance with the settlement terms in the rate proceeding (*See* PUC Docket Nos. M-2018-2640802 (water); M-2018-2640803 (Wastewater)), PWSA has formed a Community Lead Response Advisory Committee (CLRAC) consisting of interested parties from the Tariff proceeding and representatives from local community groups. A public health expert, to be agreed upon by the parties, is also being invited to participate. The initial term of the CLRAC will be two years, subject to being extended at PWSA's discretion. The Committee will hold quarterly meetings with PWSA staff, and the first meeting was held on January 8, 2019. At the CLRAC quarterly meetings PWSA will provide status updates, including updates on lead service line replacements and lead remediation efforts planned or conducted pursuant to the directives of the PA DEP, PWSA's agreement with PENNVEST, and PWSA's small diameter water main replacement program. The CLRAC will provide consultation and feedback on PWSA's lead service line replacement program and lead remediation efforts in 2019 and 2020.

At the first CLRAC meeting, PWSA presented a Community Outreach and Communication Plan for the 2019 LSLR Program for CLRAC comment and input. This plan is presently being implemented, as outreach is ongoing, and several suggestions were made by

CLRAC members for additional outreach methods. PWSA reported its efforts to track customers' reasons for rejecting service line replacements, as well as: (a) the number of customers who consented, who failed to respond, and who explicitly refused to consent and (b) the reasons provided by non-consenting customers.

For the 2019 lead service line replacement program, PWSA will consult with the CLRAC regarding whether to ask the City of Pittsburgh to establish a process through which partial lead service line replacements conducted by PWSA are documented in the property record for the relevant address. If such a process is established, property owners will be notified by PWSA that their refusal will become part of the property record when their consent is sought for a no-cost private-side replacement. This issue was discussed at the first CLRAC meeting, with follow up anticipated at future meetings.

PWSA, in conjunction with the CLRAC is in the process of formulating its plans for the lead service line replacement program post-2019. PWSA anticipates that it will formulate its plan for lead service line replacements in 2020 by May 2019.

On May 24, 2019, PWSA's Board again revised the LSLR Policy based on newly acquired information and factors: (1) the number of lead service lines; (2) where the lead service lines are located; (3) whether PWSA will continue to pay for the replacement of private side lines and if there should be an income-based cost sharing; and (4) how many lines PWSA can afford to replace (May 2019 Policy). PWSA St. C-1D, p. 24 and Exh. RAW/C-45.

PWSA's next version of the Authority's LSLR Policy is the subject of controversy in this proceeding.

## **PWSA's July 26, 2019 Lead Service Line Replacement Policy**

On July 26, 2019, PWSA's Board of Directors again revised the Authority's lead remediation policy. The policy was revised, in part, as follows.

....

### **2. Purpose**

This Policy would serve as the principle guidance by which the PWSA can implement a full-line LSLR strategy to comply with the Pennsylvania Department of Environmental Protection (DEP) requirements included in the November 17, 2017 Consent Order and Agreement (COA) between PWSA and DEP. This policy update retains those provisions previously established the PWSA Board of Directors - to refrain from performing partial lead service line replacements at residential properties. Revision 2.0 also adds to the existing policy by offering income-based reimbursements for homeowners who elect to replace their own private side lead service line.

### **3. Policy**

The PWSA Board of Directors adopts this revised policy to allow for the goal of full-line LSLR at residential properties with no more than four (4) dwelling units with service lines 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, as more fully described in PWSA Rules and Regulations (eligible residential property). This policy commits PWSA to full-line lead line replacement in various circumstances detailed in the procedures section of this policy. For future work where PWSA is replacing the public side of the service line, private side lead service lines will be replaced at no cost to the customer. Other customers who elect to replace [their] private side lead service line (where PWSA is not replacing the public side of the service line) will be offered an income-based reimbursement of those costs. Because galvanized iron has been proven to release lead into water, galvanized iron service lines will be treated as lead service lines and replaced under this policy.

1. Any eligible residential property receiving a partial public service line replacement after February 1, 2016 due to a PWSA action such as a water main replacement or PWSA's Operations' public side service line replacement, will be eligible to have their private side lead service line replaced by PWSA, at no charge to the customer.
2. If an eligible residential property owner replaced their private side LSL as a result of a PWSA public side replacement under an LSLR contract, PWSA

operations replacement, or water main replacement between February 1, 2016 and December 31, 2018, PWSA will offer a direct reimbursement for costs incurred up to a maximum of \$5,500 (based on the average cost for PWSA to replace private lines). Customers who opted to replace their private lead service line on their own (i.e. unrelated to a public side replacement) are not eligible for reimbursement.

3. If PWSA determines, in its sole discretion, that replacement of the portion of the lead water service line owned by the property owner at a particular residence or related interior plumbing modification is not technically feasible, the residence is unsafe from a structural or sanitary condition, or will result in excess expense, due to conditions such as length, terrain, obstructions, structures, pavement, trees, or other utilities, PWSA may exclude such residence from the Program and not replace the portion of the lead water service line owned the property owner. These locations will be subject to a partial lead service line replacement. The potential health risks of a partial LSR will be outlined in the communications provided to the homeowner. A partial replacement will not, however, be completed if permission has not been obtained from the property owner, where there are tenants, unless it is a relay or emergency LSLR as defined below . . . [in this policy].

### **Opposition to PWSA's Lead Remediation Program**

The other parties challenged the details of PWSA's lead remediation CP and its revisions. I&E contends that the aspect of PWSA's LSLR program, which is tied to the income of the residential customer must be rejected as non-compliant with the Code, cost inefficient and unnecessarily compromising some ratepayers' access to lead line replacement.<sup>402</sup> The OCA submits that PWSA's income-based reimbursement policy will result in fewer lead service lines being replaced, which is contrary to PWSA's stated goals in this proceeding.<sup>403</sup> OSBA disputes the part of the CP which excludes certain larger residential lines (lines greater than 1" in diameter) and non-residential lines from PWSA' LSLR program.<sup>404</sup> Similar to I&E and OCA, UNITED asserts that PWSA's plan for the replacement of residential lead service line pipes is untenable, disadvantages low and moderate income residential customers and diminishes their participation. The parties' positions are addressed below.

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<sup>402</sup> I&E M.B., p. 68.

<sup>403</sup> OCA M.B., p. 20.

<sup>404</sup> OSBA St. 1, pp. 2-6.

**a. Replacement of Private-Side Lead Service Lines Not Scheduled For Replacement Through PWSA's Current Lead Service Line Replacement Program**

**i. PWSA's Position on Lead Remediation**

Robert Weimar, PWSA's Executive Director, explained that the Authority initiated a lead line replacement program pursuant to a November 17, 2017 Consent Order and Agreement (COA) with the PADEP. PWSA St. 1 p. 51. Mr. Weimar further explained that in January 2018 PWSA adopted a lead service line policy, which mandates and pays for replacement of both the public and privately-owned portions of those lines, prioritizing properties where pregnant women and young children under six years of age live. Consistent with that policy, PWSA expects, in 2019 through mid-2020, to replace approximately 3,400 public-side lead service lines and 2,800 private-side lead service lines in several neighborhoods, including Morningside, Homewood, Perry, Mt. Washington, Southside, Northside and Greenfield; that work will be funded by a loan and grant by PENNVEST, according to Mr. Weimar. *Id.*

Mr. Weimar submits the Authority's lead service line policy targets single family residential properties, which are more likely to have a lead service line, since single family residential properties tend to have a service line with a maximum diameter of 1-inch and multi-family properties tend to have service lines with diameters of greater than 1-inch. PWSA St. 1 pp. 51-52. Mr. Weimar maintains that the typical service line size is a key factor, since historically it was rare for lines over 1-inch to be made of lead. Traditionally, Mr. Weimar posits, lead lines smaller than 1-inch were cheaper than other options (iron or galvanized); however, lead lines over 1-inch tended to be more expensive than other options. PWSA St. 1, p. 52. Consequently, PWSA targeted replacements at single family residential properties with service lines of 1-inch or less. Mr. Weimar notes that in cases of lead service lines with diameters larger than 1-inch at existing residential properties, these lines are addressed typically by replacing the service lines with standard 1-inch residential lines, including installation of multiple individual lines if more than one housing unit is served by the existing service line. *Id.*



Mr. Weimar argues that the Authority's policy of limiting lead line replacements to single-family residential properties is compliant with the Commission's reasonable service statute.<sup>405</sup> Under the Authority's Commission-approved Water Tariff Section B.12, Mr. Weimar proffers, "All Residential service lines larger than 1-inch in diameter and 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." *Id.* Thus, Mr. Weimar asserts the Authority's policy is reasonable.

As mentioned above, PWSA entered into a Consent Order and Agreement (COA) in 2017 with PADEP to resolve regulatory issues related to lead service line replacements, corrosion control treatment and other related matters. The COA sets amended deadlines for performing 'public side' lead service line replacements, completing a lead service line system inventory, finishing a corrosion control treatment study, and implementing the optimized corrosion control water treatment. CP at 119. The CP indicates that PADEP expects PWSA to inventory all residential service line connections and identify those that contain lead by December 31, 2020. CP at 119-120. Thus far according to Mr. Weimar, PWSA has used its Curb Box Inspection Program to undertake this inventory. Approximately 17,500 locations have been inventoried and processed through PWSA's quality assurance and quality control process. PWSA has identified 1,900 lead lines through this inventory process. PWSA St. 1, p. 53. PWSA is in the process of evaluating various methods to complete the inventory of its residential service line connections. *Id.*

According to Mr. Weimar in 2018, PWSA replaced 2,050 public side lead service lines and 1,324 private side service lines. *Id.* Mr. Weimer notes that PWSA's goal is to replace the public side of the residential lead service lines in its system by 2026 through its 2020-2026 small diameter water main replacement program. PWSA St. C-1 at 54; CP at 120. However, Mr. Weimar insists that if the PWSA Policy For Lead Service Line Replacement remains unchanged, PWSA will not leave a partial lead line at a residence (provided that the customer give the requisite consent) if the Public Side Lead Line is replaced. PWSA St. 1, pp. 54-55.

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<sup>405</sup> 66 Pa.C.S. § 1501.

Continuing with his testimony, Mr. Weimar explained that a component of PWSA's Private Lead Line Replacement policy is a Community Environmental Project (CEP). Funding for the CEP is separate and distinct from PWSA's construction budget. The CEP provides private-side lead line replacements for customers who are at or below 250% of the Federal Poverty Level. CP at 76; PWSA St. 1, p. 55. Under the November 2017 COA, PADEP allowed PWSA to apply \$1.8 million of what would have otherwise been a civil penalty to a private lead line replacement program for low income households, according to Mr. Weimar.

Mr. Weimar contends that prior to the award of additional funds by PENNVEST, PWSA's financial status prevented it from committing to cover costs for private-side lead service line replacements after December 31, 2018, except for the customers served by the CEP. PWSA St. 1, p. 55. Mr. Weimar argues that PWSA's CEP complies with Section 1304 as it is a reasonable and just program to advance the replacement of private-side line replacements for customers who may not be able to afford replacement of their private-side lead service lines. *Id.* Mr. Weimar submits that PWSA is trying to use as much of the \$1.8 million in funds for the CEP as it possibly can, as funds that have not been used within three years from the execution of the COA must be paid to PADEP as a civil penalty. PWSA St. 1, pp. 55-56.

Concerning PWSA's plans for the continuing funding of the Authority's Lead Service Line Replacement Program, Mr. Weimar commented that the loan and grant from PENNVEST will provide funding for 2019 through part of 2020. He explained that the Authority had no other definitive sources of funding identified beyond this loan and grant. *Id.* at 56. However, the implementation of the Authority's Small Diameter Water Main Replacement Program will address all remaining Public Side Lead Service Lines, as each public line will be replaced as each water main is replaced, he noted. *Id.*

In detailing PWSA's policy for lead line replacement, Mr. Weimar maintained that PWSA's lead line replacement efforts must be distinguished between the public side of the service line (the portion of the line from the main to the curb box) and the private side of the line (the portion from the curb box to the building meter). *Id.* at 58. With respect to the

public side after mid-2020, Mr. Weimar remarked, PWSA intends to replace public side lead service lines as part of its small diameter water main (SDWM) program. *Id.* All public side service lines, up to and including the curb stop, will be replaced when the SDWM is replaced. With respect to the private side, PWSA is removing lead service lines on the private portion of customers' properties pursuant to an interim program that will last through at least 2019. *Id.* Mr. Weimar further notes that with PENNVEST funding, the Authority plans to replace an additional 2,800 to 3,400 private-side lead service lines in the City in 2019 and into 2020. *Id.*

Mr. Weimar emphasizes that PWSA is not under any regulatory obligation to replace private side customer service lines. *Id.* Mr. Weimar remarks that PWSA has not determined its plan concerning replacement of private side lead service lines post-2019/2020. *Id.* Mr. Weimar submits if PWSA's Board makes a policy determination to perform private line replacements post-2019 that does not mean that all private side lead lines would be replaced. *Id.* at 58-59. Considering PWSA only owns the public-side service lines, Mr. Weimar posits that PWSA cannot require a customer to replace a private-side lead service line. Additionally, some PWSA customers have refused to consent to replacement of their private side lead lines or have failed to return the required consent agreement in a timely manner, despite prompting to do so, Mr. Weimar notes. *Id.* at 59.

In view of the PENNVEST loan and grant, PWSA's limited financial resources, various other efforts underway to reduce lead levels in the water supply (including the application of orthophosphate), current plans and continuing evaluation of further private lead line replacements, Mr. Weimar opines that the Authority's private lead line replacement plan is reasonable and compliant with the Commission's statute at 66 Pa.C.S. § 1304. *Id.*

For potential funding of PWSA's service line replacement program, Mr. Weimar submits that PWSA is reviewing the advisability of proposing a distribution system improvement charge (DSIC) to recover costs of construction for both lead-replacement and non-lead replacement as part of the small diameter water main replacement program. *Id.* at 60.

Mr. Weimar further testified that in accordance with the Rate Case Settlement, PWSA formed a Community Lead Response Advisory Committee (CLRAC) to provide consultation and feedback on PWSA's lead service line replacement program and lead remediation efforts in 2019 and 2020. *Id.* CLRAC consists of interested parties from the rate case and representatives from local community groups, local government and other interested parties. The initial term of the CLRAC is two years but it may be extended at PWSA's discretion. *Id.* Mr. Weimar mentioned that at the first CLRAC meeting on January 8, 2019, PWSA presented a Community Outreach and Communication Plan for the 2019 LSLR Program for CLRAC comment and input. *Id.* PWSA also reported at the initial CLRAC meeting its efforts to track customers' reasons for rejecting service line replacements and associated data. At the second CLRAC meeting held on February 6, 2019, PWSA provided an update on its lead service line replacement program and lead remediation efforts. PWSA also addressed prioritization of 2019 lead service line replacements. *Id.*

According to Mr. Weimar, once the two-year term for the CLRAC is closer to expiring, PWSA will carefully evaluate whether to continue the CLRAC. The evaluation of whether to continue the CLRAC will include an assessment of the effectiveness of the introduction of orthophosphate into the water treatment process and the current state of the lead service line replacement program. *Id.* at 61.

Concerning costs for PWSA's lead service line replacements, Mr. Weimar initially estimated that the construction-only costs for the 2018 work order areas were between approximately \$4,500 and \$5,000 for the public side and \$7,500 and \$8,000 for the private side, with an average cost of around \$12,300 for both a public and private side lead line replacement at the same location. *Id.* at 62. Mr. Weimar further stated that PWSA undertook significant efforts to review its 2018 lead service line replacement program and develop strategies for lowering the costs in 2019. PWSA's 2019 contractor bid costs came in significantly lower than in 2018, resulting in an anticipated public and private side replacement cost of around \$9,500. PWSA will continue to review per line costs and evaluate methods to lower costs beyond 2019. *Id.*

As mentioned above, the most recent version of PWSA's LSLR Policy was adopted on July 26, 2019. Mr. Weimer defended the most recent policy.<sup>406</sup> Mr. Weimer submits that the July 2019 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. Mr. Weimer contends that PWSA's orthophosphate program will shortly reduce lead levels in PWSA's system to well below the "action level" at which federal regulations require PWSA to undertake specific lead line replacement efforts. However, Mr. Weimar asserts, as a public entity, PWSA has determined that it can and should take additional operationally feasible steps in order to try to eliminate the lead in its own inventory (to the extent operationally feasible) as soon as reasonably possible. In addition, Mr. Weimar continues, PWSA has elected to go well beyond any "post-action level" obligation and to replace a residential customer-owned private side lead line without charge whenever PWSA replaces the public side, and to do so without charging the customer.

Mr. Weimar notes that 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 income customers and provide at least a \$1,000 stipend even to non-low income customers. Thus, Mr. Weimar argues that PWSA's July 2019 Policy fairly balances the needs and concerns of the community with PWSA's other substantial construction and operational obligations. Mr. Weimar reiterates and insists the steps being taken by PWSA are not mandated or required by any state or federal law or regulation, including the Public Utility Code, since water quality is the province of the PA DEP, which has not and does not require the steps that PWSA has voluntarily elected to pursue.

## **ii. I&E's Position on Lead Remediation**

I&E contends PWSA's income-based replacement policy must be rejected because it will impede its ability to comply with several Code provisions, result in high and

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<sup>406</sup> See PWSA St. C-1SD, pp. 25-26.

efficient administrative costs, and unnecessarily compromise some ratepayers' access to lead line replacements. I&E MB at 68.

I&E refutes PWSA's proposed LSLR program on four grounds. First, under Chapter 32 of the Code, the Commission has implicit authority "to address lead service lines [issues] in PWSA's system and to prescribe standards and conditions necessary for the provision of adequate, safe and reasonable service through replacement of those line." RB at 32-35. Second, under Section 3205 of the Code the Commission has authority to require PWSA to replace facilities (specifically lead service lines) used to provide service, as necessary to effectuate the reasonable service provisions of Section 1501 of the Code. *Id.* at 38. Third, advances PWSA has made in remediating lead levels in its water will lessen or retreat if the income-based reimbursement provision of PWSA's lead line replacement program goes into effect. *Id.* at 40. Fourth, PWSA's cost concern improperly subordinate public safety to City interests.

In explaining its opposition to PWSA's proposed LSLR program, I&E submits the Commission should reject PWSA's attempt to avoid accountability for replacing all residential lead service in its system. According to I&E, PWSA's attempt to avoid accountability is predicated on PWSA's faulty attempt to evade the Commission's clear authority to address the quality of service and safety of service issues arising because of lead infrastructure. I&E contends PWSA makes this attempt by couching the lead infrastructure issue as a water quality issue within the purview of the PA DEP.

I&E argues that PWSA's reliance on the holdings in *Rovin*<sup>407</sup> and *Pickford*<sup>408</sup> are not determinative or relevant because this is not a case where PWSA added a chemical into its water that impacts water quality, which is the origin of the issues underlying both *Rovin* and *Pickford*. I&E asserts this is a case in which a water quality issue resulted directly from the provision of service through unsafe lead infrastructure. I&E insists there is a distinction between

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<sup>407</sup> *Rovin v. Pa. Pub. Util. Comm'n*, 94 Pa.Cmwlth. 71, 73, 502 A.2d 785, 786 (1986).

<sup>408</sup> *Pickford v. Pa. Pub. Util. Comm'n*, 4 A.3d 707, 713 (Pa.Cmwlth. 2010).

**water** service, which the Commission may regulate, and **water** quality, which may only be regulated by the PA DEP. The distinction is determinative because precedent establishes that the Commission’s jurisdiction covers matters including “hazards to public safety due to the use of utility facilities. . . .”<sup>409</sup>

What is determinative and relevant here is that PWSA is not providing adequate, safe, and reasonable water service to its customers because the lead service lines now providing service to its customers are comprised of a dangerous material, I&E argues. Although water quality issues result from lead leaching from the service lines into the water supply, I&E submits that the undisputed, determinative fact here is that providing water service through lead service lines is unsafe and antithetical to PWSA’s obligation to provide adequate, safe, and reasonable water service. I&E emphasizes PWSA is providing unsafe service that, in turn, produces unsafe water, not vice versa. Thus, under Section 1501 of the Code,<sup>410</sup> the Commission has clear authority to address lead service lines in PWSA’s system and to prescribe standards and conditions necessary for the provision of adequate, safe, and reasonable service through replacement of those lines.

I&E also relies upon Section 3205 of the Code to support its position that the Commission has authority to address PWSA’s lead service lines. Section 3205 provides as follows:

The commission may require an **authority to maintain, repair and replace facilities and equipment used to provide services** under this chapter to ensure that the equipment and facilities comply with section 1501 (relating to character of service and facilities).<sup>[411]</sup>

I&E’s RB at 35 (emphasis in original).

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<sup>409</sup> *PECO Energy Co. v. Township of Upper Dublin*, 922 A.2d 996, 1001 (Pa.Cmwlth. 2007).

<sup>410</sup> 66 Pa.C.S. § 1501.

<sup>411</sup> 66 Pa.C.S. § 3205(a).

In construing the legislative intent of Section 3205, I&E claims, it is clear and undisputed that lead service lines, regardless of whether they are customer-owned or owned by PWSA, are facilities used to provide water service to PWSA's customers. Thus, the Commission has express authority over all lead lines used to facilitate water service provided by PWSA.

Having argued the Commission's authority over all lead lines, I&E disputes PWSA's claims that the Commission does not have the authority to order the replacement of private-side lead lines and that replacing these lines is not necessary from a health and safety standpoint.<sup>412</sup> I&E reasons that lead lines present a serious public health issue. Since, as mentioned above, Section 3205 provides the Commission with authority to require PWSA to replace facilities used to provide service, as necessary to bring PWSA into compliance with Section 1501,<sup>413</sup> I&E submits that PWSA's arguments to the contrary are with merit.

In continuing to refute PWSA's position, I&E argues that PWSA's remediation efforts thus far will be diminished in value and effectiveness if private side lead lines remain.<sup>414</sup> I&E contends the income-based reimbursement provision of PWSA's lead line replacement program, if approved, will compromise customers' ability to replace private side lead lines, thereby resulting in more lead lines remaining in PWSA's system. Such a result over time could cause "serious episodes of lead release" because of unintended changes in water quality, physical disturbance or through changes in water chemistry.<sup>415</sup> I&E submits that all the parties agree that the best way to prevent lead from leaching from water lines and home plumbing systems into PWSA's water is to remove lead lines completely.<sup>416</sup>

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<sup>412</sup> PWSA M.B., p. 59.

<sup>413</sup> I&E R.B., p. 38.

<sup>414</sup> *Id.* at 40.

<sup>415</sup> UNITED St. No. C-2 SUPP-R, p. 9.

<sup>416</sup> PWSA Exh. Stip Doc. 1, p. 58; UNITED St. No. C-2 SUPP, p. 9.



Under PWSA's LSLR policy impacted ratepayers, depending upon their income, are required to pay for replacement of their lead service line and afterwards wait for the level of reimbursement as determined by PWSA.<sup>417</sup> I&E notes that PWSA's existing LSLR policy states the average cost to replace private side lead lines is \$5,000. As further grounds to reject the income-based reimbursement component of PWSA's LSLR program, I&E asserts it is unaffordable for ratepayers.<sup>418</sup> Another reason for rejection, according to I&E, is PWSA's high estimated cost for administering the policy, that is, \$1,000 per customer.<sup>419</sup>

I&E concludes by stressing that PWSA's claim that \$8 million to \$18 million with the Commission's approval of the income-based provision of PWSA's LSLR program is outweighed by the need for ratepayers to have safe drinking water, as previously discussed. I&E maintains PWSA proposes the income-based provision of its LSLR program, which will put private-side lead line replacement out of reach for many impacted ratepayers, while simultaneously requesting that the City be permitted to continue to receive free or reduced cost water and wastewater service, among other things.<sup>420</sup> In other words, PWSA places City interest above ratepayer safety. In part, I&E posits that PWSA is well-positioned to generate revenue for residential lead service line replacements by eliminating free water and wastewater service to the City, charging the City Tariffed rates, and otherwise transacting with the City on an arm's-length, business-like basis.<sup>421</sup>

Thus, I&E requests that the Commission strike the income-based reimbursement provision of its lead service line replacement policy in favor of a plan to replace all public and private residential lead lines in its distribution system.

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<sup>417</sup> I&E R.B., p. 41.

<sup>418</sup> I&E M.B., pp. 86-88; UNITED St. C-1-Supp-R, pp. 5-6; OCA St. No. 2R-Supp, pp. 5-6.

<sup>419</sup> I&E St. No. 4-RS, p. 6; I&E Ex. No. 4-RS, Sch. 1.

<sup>420</sup> I&E M.B., p. 92.

<sup>421</sup> I&E M.B., p. 93.

### iii. OCA's Position on Lead Remediation

OCA proffers the following reasons for the Commission to reject or deny PWSA's income based LSLR policy. First, the policy will result in fewer lead service lines being replaced with little to no meaningful savings to the Authority. Second, lead service lines represent a significant public health and safety risk and should be removed from PWSA's system in their entirety. Third, the policy may not be consistent with the Public Utility Code.

OCA submits that PWSA's lead service line replacement plan has been evolving since the filing of its September 2018 petition for Commission approval of its compliance plan.<sup>422</sup> PWSA's current LSLR policy, adopted by its Board on July 26, 2019 (July 2019 Policy), raises concerns for OCA.

Going forward, PWSA will replace public lead service lines through its Small Diameter Water Main Replacement (SDWMR) program and will replace private-side lead service lines at no direct cost to customers when replacing the public side. See PWSA St. No. C-1SD at 26-29; Exh. RAW/C-46. If a customer's private-side lead service line is not slated to be replaced as part of the SDWMR program or as part of an emergency or other repair, the customer can elect to replace the private lead service line at their own expense and apply for reimbursement from PWSA based on the homeowner's income level. PWSA Exh. RAW/C-46 at 4. <sup>[423]</sup>

OCA takes issue with the income-based aspect of PWSA's July 2019 Policy. According to OCA, this policy will likely result in much more lead remaining in the system and is inconsistent with PWSA's goal of replacing all lead in the water system.<sup>424</sup>

OCA concedes that PWSA is not responsible for replacing a water service line that the Authority does not own.<sup>425</sup> However, OCA argues that PWSA's July 2019 Policy fails

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<sup>422</sup> OCA M.B., p. 16.

<sup>423</sup> *Id.*

<sup>424</sup> PWSA Exh. RAW/C-6, p. 3.

<sup>425</sup> OCA M. B., p. 18; PWSA St. No. C-1RJ.

to recognize recent changes in Pennsylvania law. Lead service lines present a significant health issue, and OCA submits that the Pennsylvania General Assembly has enacted legislation to encourage water utilities to replace customer-owned lead service lines as follows.

In late 2018, Governor Wolf signed Act 120 of 2018 into law, which became effective on December 23, 2018. Act 120 amended Section 1311(b) of the Public Utility Code, 66 Pa. C.S. § 1311(b), to allow, *inter alia*, water utilities to replace the customer-owned portion of lead service lines subject to Commission-approved budget caps, and to include the lead service line replacement costs in the utility's rate base.<sup>[426]</sup>

OCA notes that Act 120 was primarily focused on investor-owned utilities (as a municipal authority, PWSA does not have a rate base on which it can earn a return). However, OCA asserts that this change to the Public Utility Code is indicative of Pennsylvania's policy goals. Furthermore, OCA argues that Act 44 of 2017 amended the Fiscal Code to clarify that municipal authorities have the ability to replace private water or wastewater laterals in order to benefit public health. The Fiscal Code as amended, in relevant part, provides as follows:

(c) 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.<sup>[ 427]</sup>

The amendment of the Fiscal Code, OCA argues, evidences legislative intent to encourage water utilities and municipal authorities to replace the customer-owned portion of lead service lines.

Since the legislative intent and PWSA's goal is to eliminate lead from service lines, OCA's witness, Scott J. Rubin examined PWSA's July 2019 Policy and later offered its

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<sup>426</sup> OCA M.B., p. 18.

<sup>427</sup> 72 P.S. § 1719-E(c)(1).

deficiencies.<sup>428</sup> Relying on Witness Rubin’s testimony, OCA asserts when PWSA is not replacing the Authority’s portion of the service line, customers with private-side only lead service lines can elect to replace the private side on their own and apply for reimbursement of some or all of the expense based on the customer’s income. For customers choosing to replace their own private side lead service line, under PWSA’s July 2019 Policy, these customers will be reimbursed based on the customer’s income as follows:

97. Income Level	98. Reimbursement Amount
99. ≤ 300% of the Federal Poverty Level (FPL)	100. 100% of the cost of replacement
101. 301-400% of FPL	102. 75% of the cost of replacement
103. 401-500% of FPL	104. 50% of the cost of replacement
105. > 500% of FPL	106. \$1,000 stipend

The July 2019 Policy applies to customers replacing their own private-side lead service line after January 1, 2019.<sup>429</sup>

OCA argues there is no substantiated data to support PWSA’s income-based reimbursement policy; instead the policy is arbitrary and inconsistent with PWSA’s goal of removing all lead service lines from its system.<sup>430</sup> According to Witness Rubin, the policy presents a major obstacle to customers wishing to have their private-side only lead service line replaced.<sup>431</sup> Witness Rubin contends the policy requires customers to identify and hire a private contractor to perform the replacement, provide payment to the contractor up front, submit all necessary documentation of the work performed to PWSA, provide documentation of the customer’s income, and then presumably be reimbursed a percentage of the replacement cost

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<sup>428</sup> OCA St. 2R-2upp.

<sup>429</sup> OCA M.B., p. 18; *also see* PWSA Exh. RA/C-46, p. 4.

<sup>430</sup> OCA M.B., p. 19.

<sup>431</sup> *Id.* at 20.

assuming all requirements have been met.<sup>432</sup> OCA submits that PWSA has not yet articulated what documentation, such as invoices, inspections, etc. will be required to establish eligibility for reimbursement, or exactly how PWSA will go about verifying customer incomes as part of this process.<sup>433</sup> OCA is concerned that the policy requires customers to pay upfront and then be reimbursed, which may require a significant time commitment of finding, hiring, and overseeing a qualified contractor. These factors will make it much less likely that customers will replace their private-side only lead service line than if PWSA performed the work, OCA contends.<sup>434</sup>

OCA notes that PWSA's July 2019 Policy listed the average cost to replace a residential lead service line at \$5,500.00,<sup>435</sup> thereby suggesting that the actual cost to an individual customer could be much higher. Thus, Witness Rubin questions whether replacing service lines would be affordable for certain customers. Witness Rubin explained his concern as follows:

[A] single elderly person with social security and some retirement income might have an income that exceeds 300% of the FPL (\$37,470 per year). But the person's costs for necessities (food, housing, medical care, insurance, taxes, transportation, and so on) could easily consume most if not all of that income. I question whether such a customer could afford to spend \$1,000 or more to replace a lead service line.

. . . .

Young families, single mothers, and other households may have incomes that exceed 300% of the FPL but lack access to \$1,000 or more to fund their portion of a service line replacement.<sup>[436]</sup>

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<sup>432</sup> *Id.*

<sup>433</sup> OCA St. 2R-Supp, pp. 4-5.

<sup>434</sup> OCA M.B., p. 20; *also see* UNITED St. C-1-Supp-R, pp. 5-11.

<sup>435</sup> PWSA Exh. RA/C-46, p. 2.

<sup>436</sup> OCA St. 2R-Supp, pp. 5-6.

PWSA, after adopting its July 2019 Policy, OCA points out, increased the average replacement cost to \$7,500.<sup>437</sup> OCA states that PWSA Witness Weimar in his rejoinder testimony indicated that the average \$5,500 replacement cost was for construction only and did not include costs for Construction Management/Construction Inspection, data management, outreach efforts, and Program Management.<sup>438</sup>

OCA disputes PWSA's argument that the majority (53.3%) of the Authority's residential ratepayers would qualify for full reimbursement of the cost to replace their private line considering income level in the Authority's service territory.<sup>439</sup> If this is true, OCA questions the need for additional cost, complications and potential delays associated with PWSA's July 2019 policy. Additionally, OCA asserts PWSA's costs to administer the reimbursement program are estimated at \$1,000 per customer, which OCA contends appear to be high.<sup>440</sup> OCA questions PWSA's claim that the replacement program will provide an estimated savings of \$12 to \$25 million.<sup>441</sup> According to OCA, PWSA's savings claim is speculative because PWSA does not know how many lead service lines are in its system, where the lead service lines are located, or how it will administer the income-based reimbursement program.<sup>442</sup> OCA proffers that PWSA would better serve ratepayers by applying the estimated administrative costs toward replacing lead service lines at no direct costs to customers.<sup>443</sup>

Acknowledging and appreciating PWSA's goal to keep rates low by not taking on more financial obligations to replace all lead service lines at no cost to residential customers, OCA submits PWSA's currently formulated replacement policy will not achieve that goal.

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<sup>437</sup> See PWSA St. No. C-1RJ.

<sup>438</sup> See PWSA St. No. C-1RJ, p. 6.

<sup>439</sup> See PWSA St. No. C-1SD, p. 31.

<sup>440</sup> See Pittsburgh UNITED St. C-1SUPP-R, Appendix A, 1 and 2; OCA St. 2R-Supp, p. 5.

<sup>441</sup> See PWSA St. No. C-1SD, pp. 31-32.

<sup>442</sup> OCA M.B., p. 22.

<sup>443</sup> *Id.* at 23.

OCA also acknowledges PWSA's efforts to remove lead from its water system by introducing orthophosphate into its system.<sup>444</sup> However, OCA contends that orthophosphate, or any other chemical corrosion control treatment system, does not provide a permanent solution to the health risks associated with lead service lines.<sup>445</sup> OCA reiterates that the income-based reimbursement policy for private-side only lead service lines will likely result in many more lead service lines remaining in the ground. Such a result creates a risk to public health and safety. Thus, OCA asserts the policy may prevent PWSA from providing adequate, efficient, safe and reasonable service and facilities to customers as required by the Section 1501 of the Code.<sup>446</sup>

Concerning to OCA is PWSA's suggestion or indication that its income-based reimbursement policy may change in the future, considering PWSA's Witness Weimar's testimony.

[PWSA] has also committed to eliminating all lead lines in its system (that it can identify, that are operationally feasible to remove and when PWSA is given permission to do so). To do this, in 2021 PWSA will establish a plan and timeline to replace all lead service lines in its system and will establish a revised replacement timeline (its current goal is 2026) once it has completed its inventory of lead service lines in 2020.<sup>[447]</sup>

The uncertainty of PWSA's future policy raises a question for OCA. How can customers adequately evaluate whether to spend their own time and money to replace their lead line now, or wait while their family is potentially being exposed to harmful lead contamination in the hope that PWSA modifies its policy and instead replaces their private-side lead service line at no direct cost as part of a future program?<sup>448</sup>

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<sup>444</sup> OCA M.B., p. 23; *also see* PWSA St. No. C-1SC, pp. 22-23.

<sup>445</sup> OCA M.B., p. 23; *also see* UNITED St. C-2, pp. 16-17 and ST C-2SR, p. 4.

<sup>446</sup> OCA M.B., p. 24.

<sup>447</sup> OCA M.B., p. 24; *also see* PWSA St. No. C-1RJ, p. 4.

<sup>448</sup> OCA M.B., p. 25.

The next issue OCA raised was the question asked by the Commission's Staff in the November 28, 2018 Secretarial Letter, that is, whether PWSA's criteria or policy for replacing customer owned lead service lines complies with 66 Pa.C.S. § 1304. As footnoted above, Section 1304 prohibits a utility from discriminating in rates to any unreasonable preference or advantage to any person, corporation or municipal corporation. OCA proffers that PWSA's income-based reimbursement policy may be discriminatory toward customers with private-side only lead service lines.<sup>449</sup>

As rationale for its proffer, OCA submits customers with private-side only lead service lines may have received a partial lead service line replacement in the past (i.e., before 2018) through no fault of their own.<sup>450</sup> For example, before 2018 when the LSLR program began, if there was a water main break, PWSA may have replaced the public line but would have left the associated private-side lead service lines in place. According to OCA, customers in this situation would not be eligible to have their private-side lead service line replaced at no direct cost under PWSA's current program. OCA maintains these customers are also paying for other customers' lead service line replacements through PWSA's base rates, while they would be required to replace their private-side only lead service line independently and seek some amount of reimbursement under PWSA's income-based reimbursement policy. OCA opines that PWSA has provided no reasonable basis for drawing this line and requiring customers with private-side only lead service lines to make a significant out-of-pocket contribution toward replacing their lead service line while other customers receive a lead service line replacement at no direct cost. Thus, OCA submits that PWSA's current LSLR Policy violates Section 1304 of the Code.

Considering the significant and ongoing public health concerns associated with lead service lines, the OCA maintains the Commission should reject PWSA's income-based reimbursement policy and order PWSA to develop a comprehensive plan to replace all lead service lines in its system at no direct costs to customers.

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<sup>449</sup> *Id.* at 26.

<sup>450</sup> *Ibid.* at 26-27.



#### iv. UNITED's Position on Lead Remediation

UNITED submits that the Commission should reject PWSA's LSLR Program because the income-based reimbursement component does not ensure adequate, efficient, safe, reliable and reasonable service. Before arguing this point, UNITED addresses the Commission's jurisdiction over PWSA's lead remediation plans. UNITED refutes PWSA's argument that the Commission lacks jurisdiction over the Authority's remediation program because the Authority's water quality is under DEP's jurisdiction. UNITED maintains that under Section 1501 of the Code, the Commission is required to ensure that every public utility provides its customers with adequate, safe and reasonable service.<sup>451</sup> "In reaching a determination as to whether a utility has provided adequate and reasonable service," UNITED argues that the Commission has recognized "that *every* customer is entitled to water that is fit for basic domestic purposes; e.g., cooking, drinking, washing, and bathing."<sup>452</sup> Lead contamination renders the water of a significant number of PWSA customers unfit for drinking and cooking,<sup>453</sup> which means these customers are not receiving safe service, UNITED contends. Thus, UNITED asserts that the Commission has the authority to ensure that PWSA provides its customers with safe water.

In support of the Commission's jurisdiction, UNITED points to the fact that one of the legislature's reasons for moving PWSA under the Commission's jurisdiction was to secure its oversight of PWSA's lead remediation plans.<sup>454</sup> UNITED argues the Commission by issuing its Final Implementation Order exercised its jurisdiction over lead remediation, instructing PWSA to submit "a comprehensive plan to address lead levels in its water supply and the replacement of lead service lines" as part of its Compliance Plan and LTIP.<sup>455</sup>

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<sup>451</sup> UNITED M.B., p.19.

<sup>452</sup> *Pa. Pub. Util. Comm'n, et al. v. Pennsylvania Gas and Water Co.*, Docket Nos. R-850178 et al., (Opinion and Order entered April 24, 1986) (emphasis added); 61 Pa. PUC 409; 1986 Pa. PUC 113.

<sup>453</sup> *Id.* 61 Pa. PUC 409, 416, n.8 (describing the utility's unfit water similar to PWSA tap water monitoring showing elevated levels of lead).

<sup>454</sup> UNITED M.B., p. 19.

<sup>455</sup> *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 (order entered Mar. 15, 2018).

UNITED emphasizes that the Commission's jurisdiction over PWSA's lead remediation efforts is also supported by Section 1311(b)(2) of the Code, 66 Pa.C.S.

§ 1311(b)(2). Under Section 1311(b)(2), UNITED argues utilities can recover the cost of replacing customer-owned lead service lines under a commission-approved program. UNITED acknowledges that the Commission cannot contradict orders duly issued by DEP regarding water quality.<sup>456</sup> However, UNITED asserts the Commission retains authority to order PWSA to take other steps to protect customers from lead-contaminated drinking water and ensure the utility is providing safe service.<sup>457</sup>

Next UNITED argues its opposition to PWSA's LSLR Program.<sup>458</sup> United submits that PWSA's Compliance Plan and LTIP do not ensure safe service because they fail to offer an effective plan to replace thousands of lead service lines. PWSA's proposed income-based reimbursement program, together with its plan to terminate the neighborhood-based program, according to UNITED, will leave large numbers of PWSA customers at risk from lead-contaminated water, particularly low income, Black, and Latinx customers who are especially vulnerable to lead exposure.

UNITED emphasizes that in Pittsburgh, where drinking water lead levels have been elevated for three years and remain so today, and where PWSA's profound and prolonged mismanagement of the system caused the present lead crisis, the utility must remove its lead lines to ensure safe service over the long term. In support of its position, UNITED relies upon the testimony of its witnesses, Dr. Lanphear, mentioned above, and Gregory Welter, who is an engineer with extensive experience in utility lead remediation programs. Witness Welter stated,

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<sup>456</sup> See *Pickford v. Pa. Pub. Util. Comm'n*, 4 A.3d 707, 714 (Pa.Cmwlth. 2010) (holding that Commission lacked jurisdiction over a collateral attack on a DEP permit authorizing a utility to use a certain water treatment chemical).

<sup>457</sup> *Pickford v. Pa. Am. Water Co.*, Docket Nos. C-20078029 et al., at 13 (Opinion and Order entered Mar. 20, 2008). (“[A] utility’s compliance with the SDWA [Safe Drinking Water Act] is a portion, albeit critical, of all of the broad categories of service over which the Commission has jurisdiction.”); *Pa. Pub. Util. Comm’n v. Clean Treatment Sewage Co.*, Docket Nos. C-2009-2125411 et al., at 16 (Opinion and Order entered Apr. 22, 2010) (similar).

<sup>458</sup> UNITED M.B., pp. 21-22.

“As long as lead service lines remain part of PWSA’s system, there is the potential that they will leach lead into customers’ drinking water.”<sup>459</sup> Dr. Lanphear stated, “Removing all lead service lines from the water system is the only effective, permanent way to protect children and other residents from lead in their drinking water.”<sup>460</sup>

UNITED further asserts that PWSA’s recent changes to its corrosion control treatment system do not obviate the need to replace all lead service lines. As explained by Witness Welter, UNITED contends, “The addition of orthophosphate is neither an immediate nor permanent fix.”<sup>461</sup> The orthophosphate PWSA began adding to its water in April of this year should help reduce corrosion and tap water lead levels, UNITED concedes.<sup>462</sup> However, UNITED posits that this chemical treatment can take up to a year before becoming fully effective, and lead levels in PWSA’s system remain high.<sup>463</sup> Additionally, UNITED asserts orthophosphate treatment is not a long-term solution to lead exposure from pipe corrosion. Changes to source water chemistry, shifts in water treatment (authorized or unauthorized), and physical disruption of lead service lines (such as street construction) can damage the protective scale formed by orthophosphate and release lead into drinking water, UNITED maintains.<sup>464</sup>

Considering the history of PWSA’s lead crisis and remediation efforts, UNITED submits that replacing lead service lines is the only way to ensure the long-term, reliable provision of safe drinking water.<sup>465</sup> However, UNITED argues PWSA does not yet have a plan to provide all customers with lead service line replacements.<sup>466</sup> UNITED notes that PWSA’s

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<sup>459</sup> *Id.*, at 22; *also see* UNITED St. C-2, p. 17 and C-3, pp. 21-22.

<sup>460</sup> UNITED St. C-3SR, p. 5 and St. C-1, p. 1-2.

<sup>461</sup> UNITED St. C-2, p. 16.

<sup>462</sup> *Id.*, at 9.

<sup>463</sup> UNITED St. C-3SUPP-R, p. 6; Pittsburgh UNITED St. C-2SUPP-R, p. 8-9.

<sup>464</sup> UNITED St. C-2, p. 17.

<sup>465</sup> *Id.* at 16-18; UNITED St. C-3, pp. 21-22.

<sup>466</sup> UNITED St. C-2, pp. 14, 26-27.

current plan is to conduct most lead service line replacements through its existing neighborhood-based program through 2020, and then, starting in 2021, to conduct most replacements through its small-diameter water main replacement program.<sup>467</sup> UNITED further notes that PWSA recently introduced a third initiative, an income-based reimbursement program, purportedly designed to address a serious gap in PWSA's two existing programs—customers with private-side lead service lines not otherwise scheduled for replacement.

UNITED argues that PWSA's neighborhood-based program, replaces full and public-side-only lead service lines, is deficient because of its limited scope or reach, i.e. lead service lines are replaced only in certain neighborhoods.<sup>468</sup> Additionally, the neighborhood-based program does not replace private-side-only lead service lines (where the private side is lead and the public side is non-lead).<sup>469</sup>

UNITED explains that once the neighborhood-based program ends, PWSA will conduct lead service line replacements primarily through its small-diameter water main program.<sup>470</sup> Between 2020 and 2026, PWSA will remove about 138 miles of small-diameter water mains.<sup>471</sup> When PWSA replaces a water main running down a street, it will replace all of the public-side service lines attached to the main, regardless of the material those lines are made of.<sup>472</sup> PWSA will also offer to replace, free of charge, any private-side lead service line attached to a public-side line that it removes.<sup>473</sup>

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<sup>467</sup> LTIIP, p. 28 (“LSLR Program” in Table 2-7 refers to the neighborhood-based program).

<sup>468</sup> UNITED M.B., p. 23.

<sup>469</sup> UNITED St. C-2, at 10.

<sup>470</sup> UNITED M.B., p. 25.

<sup>471</sup> UNITED St. C-2SUPP-R, p. 4.

<sup>472</sup> *Id.* at 2-3.

<sup>473</sup> *Id.*

UNITED contends that similar to the neighborhood-based program, the reach of the small-diameter water main program is limited.<sup>474</sup> The program will not cover about 580 miles, or 80 percent, of the approximately 720 total miles of small-diameter mains in PWSA's system.<sup>475</sup> UNITED notes that PWSA estimates that each mile of water main has about 41 lead service lines connected to it,<sup>476</sup> though the exact numbers are unknown because PWSA has yet to compile an accurate inventory of lead service lines in its system.<sup>477</sup> Nevertheless, UNITED asserts that by PWSA's own estimates, thousands of customers with lead pipes are likely to be excluded from the small-diameter water main replacement program.<sup>478</sup> Thus UNITED opines that taken together, the neighborhood-based and small-diameter water main programs will leave a significant number of lead service lines in the ground, posing an ongoing risk to the health and safety of PWSA customers.<sup>479</sup>

UNITED also maintains that PWSA's income-based LSLR Program is deficient for the following reasons. UNITED notes that PWSA's income-based program offers to reimburse customers who hire and pay a contractor to replace a private-side lead service line.<sup>480</sup> PWSA estimates that the average cost to a customer replacing a private-side lead service line is \$5,500.<sup>481</sup> Under PWSA's proposal, customers are expected to identify a contractor themselves and pay for the entire private-side replacement up front.<sup>482</sup> After replacement, the customer can apply to PWSA for a reimbursement. The amount of the reimbursement depends on the customer's income.<sup>483</sup> However, UNITED asserts that aside from the basic cost-sharing design,

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<sup>474</sup> UNITED M.B., p. 25.

<sup>475</sup> UNITED St. C-2SUPP-R, p. 4.

<sup>476</sup> *Id.*

<sup>477</sup> UNITED St. C-2, pp. 29-32.

<sup>478</sup> UNITED St. C-2SUPP-R, p. 4.

<sup>479</sup> UNITED M.B., p. 25.

<sup>480</sup> PWSA St. C-1SD, p. 30-32.

<sup>481</sup> PWSA St. C-1RJ, p. 6.

<sup>482</sup> *Id.* p. 9.

<sup>483</sup> PWSA St. C-1SD, p. 30-31.

PWSA has yet to offer critical details about this program, including a detailed budget, how long it will take to process and distribute reimbursements to customers, or how it will calculate customers' income.<sup>484</sup> The program is not described in PWSA's Compliance Plan or LTIIP; PWSA first offered testimony on the program in August 2019, UNITED underscores.<sup>485</sup>

UNITED contends the PWSA's most recent initiative's first and most serious deficiency is PWSA's decision to use a reimbursement structure. Pittsburgh UNITED witness, Mitchell Miller, a former Director of the Bureau of Consumer Services—with decades of experience in designing and implementing low income programming—reviewed PWSA's proposed reimbursement program and concluded that, “by distributing this program's assistance through reimbursements, PWSA effectively and disproportionately excludes low income customers from participating.”<sup>486</sup>

According to UNITED a private-side lead service line replacement costs thousands of dollars. Low and moderate-income families simply cannot afford that expense.<sup>487</sup> Twenty-two percent of Pittsburghers live below the federal poverty line.<sup>488</sup> Many PWSA customers struggle just to keep up with their monthly water bills. It is unrealistic to expect these same households to pay thousands of dollars for a lead service line replacement.<sup>489</sup>

Fifty-three percent of PWSA's customers earn less than 300 percent of the federal poverty line, and thus are eligible for a full reimbursement of their replacement costs.<sup>490</sup> Yet, UNITED notes that as Witness Miller concluded, “PWSA's promise of a future reimbursement is

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<sup>484</sup> UNITED St. C-1SUPP-R, p. 16.

<sup>485</sup> PWSA St. C-1SD, p. 30-32.

<sup>486</sup> UNITED St. C-1SUPP-R, p. 6.

<sup>487</sup> *Id.* at 5-7.

<sup>488</sup> *Id.* at 6.

<sup>489</sup> *Id.* at 5-6.

<sup>490</sup> PWSA St. C-1SD, p. 30-31.

meaningless for those who cannot afford to front the costs of replacement and wait for reimbursement.”<sup>491</sup> The sliding scale purports to account for customers’ financial need, but PWSA erects a formidable barrier to accessing assistance that is impossible for many low and moderate income customers to clear.

Thus, UNITED concludes that the harsh outcome of PWSA’s income-based reimbursement program is that the customers most in need of assistance are least likely to get it. Low income customers are more likely to live in older homes with lead service lines and other sources of lead contamination.<sup>492</sup> They are less likely than wealthier customers to have the savings or access to capital necessary to fund the replacement of a lead service line at their residence.<sup>493</sup> Moreover, because poverty rates among Black and Latinx Pittsburghers are nearly double those of whites, the program is also likely to exclude them in disproportionate numbers.<sup>494</sup> According to UNITED’s witness, Dr. Lanphear, this disproportionate exclusion of low income, Black, and Latinx residents puts them “at a greater risk of suffering the harmful risk of lead exposure than a program in which PWSA offers to replace all private-side lead service lines at no direct cost to customers.”<sup>495</sup> Lead service line replacement policies should be skewed *in favor* of customers who have higher risks of exposure to lead. Instead, the income-based reimbursement program stacks the deck against the customer, UNITED submits.

Notwithstanding PWSA’s customers may lack the funds to replace their lead service lines, UNITED also asserts PWSA places the onus upon the customer to initiate the replacement process and afterwards await reimbursement.<sup>496</sup> UNITED contends this is another flaw in PWSA’s income-based reimbursement program. Under PWSA’s reimbursement plan,

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<sup>491</sup> Pittsburgh UNITED St. C-1SUPP-R, p. 6.

<sup>492</sup> Pittsburgh UNITED St. C-3, pp. 7-8, 13.

<sup>493</sup> Pittsburgh UNITED St. C-1SUPP-R, p. 5-6.

<sup>494</sup> *Id.* at 7.

<sup>495</sup> Pittsburgh UNITED C-3SUPP-R, p. 4.

<sup>496</sup> UNITED M.B., p. 32.

customers, not PWSA, must determine whether they have a private-side lead service line, understand the risk presented by the lead service line, know that PWSA will reimburse them for its replacement, complete PWSA's income verification process, find a contractor who will replace the line, pay for the replacement, and apply for reimbursement.<sup>497</sup> UNITED contends that the time and resources necessary to navigate this winding path to reimbursement will be especially burdensome for low income customers who may work multiple jobs, have child or family care responsibilities, or lack private transportation or internet access.<sup>498</sup>

UNITED emphasizes that the path is also full of pitfalls for customers who are not experts in lead service line replacement. For example, customers trying to determine if participation in the income-based reimbursement program is worth their time and expense might look to a tap water lead test to see if their drinking water has elevated lead levels. If customers are not aware that there is no safe level of lead in drinking water or that lead levels can fluctuate over time, they might incorrectly conclude that they are not at risk.

UNITED continues by arguing that selecting a contractor to perform a lead service line replacement is not straightforward. Even a customer who has time to collect and compare contractors' estimates may not know to probe those contractors on the replacement method they will use. As PWSA can attest from experience, trenchless replacements cost less and cause less property damage than open trench methods, but not all contractors have experience with trenchless replacements.<sup>499</sup> The myriad steps to finding and replacing lead service lines are routine for PWSA, but they may confuse customers and dissuade them from pursuing a lead service line replacement.

UNITED opines that the deficiencies in PWSA's income-based reimbursement program - requiring customers to pay for replacements up front, not offering free replacements to

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<sup>497</sup> *Id.* at 7.

<sup>498</sup> *Id.* at 7-8.

<sup>499</sup> Pittsburgh UNITED St. 4, at 24-25 (rate case testimony incorporated by reference at Pittsburgh UNITED St. C-2, p. 2-3 & n.3); *see also* PWSA St. C-1R, p. 50.



all customers, and relying on customers to initiate replacements - are each significant in its own right. Taken together, they will render PWSA's program ineffective and leave thousands of customers at risk of exposure to lead, with low and moderate-income residents faring the worst. The income-based reimbursement program will not ensure adequate, efficient, safe, reliable, and reasonable service. Thus, UNITED submits that the Commission should reject PWSA's proposal and order the Authority to submit a new plan.<sup>500</sup>

In disagreeing with PWSA's LSLR program, UNITED proposes that PWSA should continue with the neighborhood-base program.<sup>501</sup> Thus, UNITED submits the following:

PWSA need not reinvent the wheel to find an effective approach to private-side lead service line replacements. Its neighborhood-based program stands as a proven model for removing large numbers of lead service lines with speed, efficiency, and prioritization for vulnerable residents. In contrast to the income-based reimbursement program, the neighborhood-based program offers free, PWSA-coordinated replacements to all eligible customers living within designated work order areas.<sup>[502]</sup>

Accordingly, UNITED opines that the Commission should order PWSA to submit a revised plan to replace lead service lines not scheduled for removal through PWSA's existing programs. UNITED argues the evidence shows that the neighborhood-based program is "necessary and in the public interest" because it offers a rapid, efficient approach to lead service line replacement that prioritizes parts of the city most at risk from lead-contaminated drinking water.<sup>503</sup> Therefore, UNITED asserts the Commission should direct PWSA to continue neighborhood-base program after 2020 and incorporate it into a revised Compliance Plan and LTIP. In the alternative, the Commission could leave PWSA with the discretion to propose a substitute for the neighborhood-based program, as long as the substitute program offers free,

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<sup>500</sup> UNITED M.B., p. 36

<sup>501</sup> *Id.*

<sup>502</sup> *Id.*

<sup>503</sup> See PUC, *Review of Long-Term Infrastructure Improvement Plan*, Docket No. L-2012-2317274, p. 23 (Final Rulemaking Order entered May 22, 2014).

PWSA-coordinated private-side lead service line replacements and begins no later than the neighborhood-based program's termination in 2020.

Finally, the revised Compliance Plan and LTIIP should provide details on the proposed lead remediation program's administration, including a budget and customer eligibility criteria. The parties and the general public should be able to comment on the plan, and it should be subject to Commission review and approval in an on-the-record proceeding, UNITED concludes.<sup>504</sup>

**v. PWSA's Response to I&E's, OCA's and UNITED's Positions**

PWSA states, "I&E, OCA and UNITED oppose a program set forth in PWSA's July 2019 Lead Service Line Replacement Program Policy to reimburse residential customers when they elect to replace their line on their own, using an income based sliding scale."<sup>505</sup> PWSA asserts that these arguments should be rejected for three overarching reasons. First, I&E, OCA and UNITED fail to acknowledge that lead remediation is a water quality issue. Thus, PWSA insists that the Commission is without jurisdiction to order the Authority to take steps in this area.<sup>507</sup> According to PWSA, the only reason to remove a private-side lead service line is to address the public health issue of making the customer's water quality acceptable (i.e., to ensure that the customer's water does not have an unacceptable level of lead in it). If lines containing lead did not impact the level of lead in tap water, there would be no reason to remove them, PWSA asserts. Thus, PWSA argues the level of lead in tap water is plainly a "water quality"

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<sup>504</sup> UNITED M.B., pp. 39-40.

<sup>505</sup> I&E M.B. pp. 74-94; OCA M.B. pp. 19-20; UNITED M.B. pp. 26-36. OSBA took no position on this issue but believes the if the Commission determines that PWSA's LSLR Policy should be extended to non-residential customers and that the income-based reimbursement program is appropriate for residential customers, that non-residential customers should be eligible to receive a \$1,000 stipend as opposed to the income-based schedule. OSBA M.B. p. 8, 11-12.

<sup>506</sup> PWSA R.B., p. 23.

<sup>507</sup> *Id.*

issue that is clearly within the province of the DEP to regulate – not the Commission. PWSA maintains its jurisdiction argument is supported by both Commission and court decisions.<sup>508</sup>

PWSA continues by arguing that UNITED simply makes the unsupported claim that the Commission has the authority to take steps to ensure that customers are not drinking lead-contaminated drinking water.<sup>509</sup> This statement is not true, PWSA retorts. Environmental regulations<sup>510</sup> – not utility regulations – establish the permissible limit for lead in drinking water.<sup>511</sup> PWSA submits that the Authority has made extraordinary efforts to remediate lead in its system in response to a PADEP water quality mandate and a Consent Order and Agreement<sup>512</sup> entered into with PADEP (PADEP’s Lead COA). PWSA contends that UNITED also implies that because PADEP has not evaluated or approved PWSA’s proposals to create an income-based reimbursement program or to end its neighborhood-based program that the Commission should evaluate the programs.<sup>513</sup> PWSA refutes this implication as disingenuous because: (1) there has been no allegation that PWSA is presently out of compliance with PADEP regulatory requirements; (2) it ignores the fact that PADEP’s Lead COA that grants PWSA the discretion as to whether to replace private-owned portions of lead service lines or simply notify customers of “partial replacement” concerns;<sup>514</sup> and (3) it ignores the fact that PWSA has regularly briefed PADEP on its LSLR programs.<sup>515</sup>

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<sup>508</sup> *Rovin, D.D.S. v. Pa. Pub. Util. Comm’n*, 502 A. 2d 785 (Pa.Cmwlth. 1986); *Pickford v. Pa. Pub. Util. Comm’n*, 4 A.3d 707 (Pa.Cmwlth. 2010); *see also Country Place Waste Treatment Company, Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa.Cmwlth. 1995) (Commission lacks authority to regulate air quality where sewage treatment plant caused odor).

<sup>509</sup> UNITED M.B., p. 20.

<sup>510</sup> *See* 25 Pa.Code § 109.1102(a) and other DEP regulation discussed above.

<sup>511</sup> 25 Pa.Code §§ 109.1101 to 109.1108.

<sup>512</sup> UNITED St. 4 (Welter) at Appendix D (November 2017 Consent Order and Agreement).

<sup>513</sup> UNITED M.B., p. 21.

<sup>514</sup> UNITED St. 4 (Welter) at Appendix D (November 2017 Consent Order and Agreement).

<sup>515</sup> PWSA St. No. C-1R-Supp. (Weimar), pp. 5-6; PWSA Supplemental St. No. C-1SD (Weimar), pp. 23-24.

Next PWSA addresses I&E’s claims that Commission jurisdiction over PWSA’s private-side lead replacement policy is established under Section 1501 of the Code.<sup>516</sup> PWSA argues that I&E provides no support for that assertion.<sup>517</sup> PWSA also discounts I&E’s position: elevated lead levels in the water *derives* from lead infrastructure, thereby bringing the PWSA’s income-based reimbursement policy within the Commission’s jurisdiction.<sup>518</sup> PWSA reiterates if the lines containing lead did not impact the level of lead in tap water, causing a water quality issue, there would be no reason to remove them.<sup>519</sup> The level of lead in tap water (even though the lead stems from a service line) is undeniably a “water quality” issue, PWSA insists, that is clearly regulated by PADEP and not the Commission. PWSA argues that no prior PUC or court case has ever suggested that the PUC maintains jurisdiction because the utility is providing a “service” using its facilities.<sup>520</sup> Additionally, PWSA contends that the Authority’s PWSA’s lead remediation efforts go well beyond any legal or regulatory requirements and well beyond what will be necessary from a health or safety standpoint, since PWSA’s corrosion control plan will reduce the lead levels in tap water to well below the PADEP action level.<sup>521</sup>

Second, PWSA points out that none of the opposing parties acknowledge or recognize that their demand that PWSA replace private lines is inconsistent with PWSA’s tariff and precedent establishing that a utility is not responsible for facilities owned by the customer.<sup>522</sup> PWSA notes that recently the Pennsylvania General Assembly added a provision to the Code which permits a regulated water utility to recover the cost of replacing private service lines in its

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<sup>516</sup> I&E M.B., p. 76.

<sup>517</sup> I&E M.B., pp. 76, 81-82.

<sup>518</sup> I&E M.B., p. 21

<sup>519</sup> PWSA R.B., p. 25.

<sup>520</sup> In addition, this argument ignores the fact that even if one were to conclude that the lead problem stems from “facilities” they are not PWSA’s facilities – they are the customer’s service line.

<sup>521</sup> PWSA R.B., pp. 25-26; Partial Settlement §§ III.M.2.c, III.XX; PWSA St. C-1RJ (Weimar), pp. 17-18; PWSA St. C-1R-Supp (Weimar) at 7; PWSA St. C-1SD (Weimar), pp. at 22-23; PWSA St. C-1R (Weimar), pp. 2-3, 37-38; PWSA St. C-1 (Weimar), pp. 48-49.

<sup>522</sup> PWSA R.B., p. 25

rates, but there is no mandate for such replacements.<sup>523</sup> PWSA questions whether the General Assembly would have to add such a provision if the Commission already had the authority to order a utility to replace the facility. PWSA answers its question in the negative. Continuing with its points, PWSA argues that a recent enactment of the Legislature also limits a municipality's expenditure of funds for the replacement of private service lines unless "the authority determines that the water replacement or remediation will benefit the public health, public water supply system or public sewer system."<sup>524</sup> PWSA has made the determination that the income-based reimbursement program – along with all of its other lead remediation steps – is what it needs to do to benefit health.<sup>525</sup>

Third, PWSA suggests that both OCA and I&E fundamentally misunderstand the Authority's stated policy for the replacement of lead service lines – a policy that is memorialized and to which they agreed in the Partial Settlement.<sup>526</sup> I&E and OCA call for the Commission to reject PWSA's income-based reimbursement policy in favor of a "comprehensive plan" to replace all residential lead service lines in its system at no direct cost to customers.<sup>527</sup> But the Partial Settlement *already reflects* PWSA's comprehensive plan for addressing lead remediation issues.<sup>528</sup>

PWSA explains that the Authority has committed to a SDWMR Program that will eventually remove 100% of the residential public side lead service lines.<sup>529</sup> PWSA submits that the Authority has also committed to replacing the private-side line when the public side is replaced – to avoid partial replacements – or when it otherwise touches the service line.<sup>530</sup>

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<sup>523</sup> 66 Pa.C.S. § 1311.

<sup>524</sup> PWSA M.B., p. 71, fn. 296.

<sup>525</sup> PWSA R.B., p. 26.

<sup>526</sup> OCA M.B., p. 28; I&E M.B., p. 21.

<sup>527</sup> OCA M.B., p. 28; I&E M.B., p. 21.

<sup>528</sup> PWSA R.B., pp. 26-27 (emphasis in original); Joint Petition, pp. 43-53.

<sup>529</sup> PWSA Hearing Exh. 3 (LTIP), p. 28, Table 2-8.

<sup>530</sup> PWSA M.B., p.61.

PWSA's target is to replace all lead service lines serving a residence (of which it is aware and are operationally feasible to replace) in its system by 2026.<sup>531</sup> In refuting UNITED's claims that the income-based reimbursement policy's goal is to fill a gap in PWSA's replacement efforts,<sup>532</sup> PWSA replies that the goal of the policy is to offer financial assistance to customers that do not want to wait for a replacement via the SDWMR program.<sup>533</sup> PWSA emphasizes that the issue is therefore not whether these lines will be replaced but when the lines will be replaced. Consequently, assertions that the income-based reimbursement policy will result in fewer service lines being replaced<sup>534</sup> are simply not correct, PWSA retorts.<sup>535</sup>

In further responding to the opposing argument, PWSA contends the income based policy 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>536</sup> PWSA reiterates that the Authority 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. PWSA emphasizes that those remediation efforts will cost hundreds of millions of dollars, and while the Authority 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>537</sup> Moreover, PWSA maintains the Authority has also implemented a corrosion control program using orthophosphate which will reduce lead levels to well below the PADEP/EPA "Action Levels," further reducing the urgent need to replace all lead lines.

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<sup>531</sup> PWSA M.B., p. 57

<sup>532</sup> UNITED M.B., p. 27.

<sup>533</sup> PWSA M.B., pp. 64-65

<sup>534</sup> See I&E M.B, p. 68; OCA M.B., pp. 8, 19-20; UNITED M.B., pp. 32-36.

<sup>535</sup> PWSA R.B., p. 27.

<sup>536</sup> *Id.* at 28.

<sup>537</sup> *Id.*

Additionally, PWSA suggests that the opposing parties' concern that the income based policy will unfairly require households to cover the cost of replacement upfront is unfounded.<sup>538</sup> As PWSA Witness Weimar explained, PWSA is willing to modify its program to address this concern so that customers would not need to "front" the payment and await reimbursement. PWSA submits the Authority also expressed a willingness to work with the Community Lead Response Advisory Committee (CLRAC) to enable tenants of eligible multi-family dwellings to qualify for the program based on the income of the tenants and not the landlord. In addition, PWSA contends the Authority is willing to commit to consulting with CLRAC regarding the development of its outreach program for the income-based reimbursement policy.<sup>539</sup>

Concerning the parties' objections that the administrative costs for PWSA's income-based reimbursement program are too high,<sup>540</sup> PWSA submits that even with the administrative costs, roughly \$1,000 per homeowner owner, the income-based reimbursement program is nonetheless millions of dollars less expensive than if PWSA replaced all of these lines. Thus, on net, PWSA argues the income-based reimbursement program will lower the overall cost to ratepayers compared to if PWSA performed the work directly.<sup>541</sup>

With regard to private-side only lead service lines (lines where the public side has already been replaced at some time in the past), PWSA notes that OCA claims that the Authority has provided no reasonable basis for not replacing those lines at no direct cost to customers.<sup>542</sup> Contrary to OCA's assertion,<sup>543</sup> however, PWSA contends that the Authority's current LSLR Policy does provide that residential customers that received a partial public service line

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<sup>538</sup> UNITED M.B., p. 86; OCA M.B., p. 20; I&E M.B., p. 86.

<sup>539</sup> PWSA St. C-1RJ (Weimar), pp. 11-12; PWSA M.B., pp. 76-77.

<sup>540</sup> I&E M.B., pp. 68, 76, 84-85; OCA M.B., p. 19; UNITED M.B., p. 31.

<sup>541</sup> PWSA M.B., p. 30; PWSA St. C-1RJ (Weimar), p. 13.

<sup>542</sup> OCA M.B., p. 27.

<sup>543</sup> OCA M.B., p. 26.

replacement after February 1, 2016 (and now have a private-side only lead service line), are eligible to have their private side lead service line replaced by PWSA at no direct cost to the customer.<sup>544</sup> Moreover, PWSA points out that the Joint Petition reflects that the Authority will offer to replace a private-side only lead service line at no direct cost to a property owner that is within a work order area of a neighborhood-based lead service line program where replacements are performed after completion of the 2019 LSLR Program.<sup>545</sup> Finally, if they still exist, these lines also will be replaced at no direct cost to the customer when they are “touched” pursuant to PWSA’s SDWMR program, PWSA confirms.

Therefore, PWSA opines that it is reasonable for the Authority’s lead remediation efforts to afford different treatment to customer-owned lead service line replacements that are not prompted by PWSA removal of a corresponding public side lead line.<sup>546</sup> PWSA again asserts that the Authority has established a voluntary policy to cover private line replacements and is under no regulatory obligation to replace private side lines that it does not own.<sup>547</sup> All of these lines will eventually be replaced at no direct cost to the customer, PWSA submits, if the customer is willing to wait until the SDWMR program addresses them. Again, PWSA contends this issue is a water quality issue. Thus, PWSA respectfully submits that the Commission does not have the authority to direct PWSA to proceed in a manner different than that which has been presented to PADEP.<sup>548</sup>

Additionally, PWSA notes that the Authority’s 2019 LSLR Program, which replaces service lines on a neighborhood basis, will be complete in 2020.<sup>549</sup> Afterwards, PWSA

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<sup>544</sup> July 26, 2019 LSLR Policy at 3.1. In addition, the LSLR Policy provides for reimbursement of costs to customers that replaced their own private-side LSLs as a result of a PWSA public-side replacement performed between February 1, 2016 and December 31, 2018. *See* LSLR Policy, Section 3.2.

<sup>545</sup> Joint Petition § VV.1.a.ii.

<sup>546</sup> PWSA M.B, p. 78.

<sup>547</sup> PWSA M.B., p. 71.

<sup>548</sup> PWSA R.B., p. 31.

<sup>549</sup> *Id.* at 33.



intends to focus on replacing lead service lines through its SDWMR program. PWSA submits that the Authority's SDWMR program will eventually replace all public side lines (and PWSA has committed to replace the private side of the line when it replaces the public side or relay).<sup>550</sup> PWSA's goal is to replace all lead service lines serving its customers' residences (of which it is aware and are operationally feasible to replace) in its system by 2026.<sup>551</sup> PWSA states that the Joint Petition for Settlement also contains several other LSLR commitments, including that the Authority will estimate all lead service lines in its territory (connected to a residence) by the end of 2020, and by March 31, 2021, formulate a plan and timeline for removing the known public and private-side lines connected to a residence.<sup>552</sup> PWSA adds that the Authority's future plans to remove all known residential public and private-side service lines may include a neighborhood LSLR program.<sup>553</sup>

PWSA comments that OCA and I&E made suggestions for the Authority's remediations plans once the neighborhood-based program is discontinued; however, neither OCA nor I&E oppose the discontinuation of PWSA's neighborhood-based program.<sup>554</sup> PWSA also comments that the Joint Petition for Settlement sets forth PWSA's agreed upon comprehensive plan for addressing lead remediation issues (except for its income-based reimbursement policy). However, PWSA's future plans may include a neighborhood-based program, depending on the results of its inventory studies, SDWMR replacement locations and available resources.<sup>555</sup>

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<sup>550</sup> PWSA M.B., p. 57; PWSA Hearing Exh. 3 (LTIP), p. 28, Table 2-8.

<sup>551</sup> PWSA M.B., p. 57.

<sup>552</sup> Joint Petition § III.QQ.2.a.

<sup>553</sup> PWSA M.B., p. 77; PWSA St. C-IRJ (Weimar), p. 16-17.

<sup>554</sup> OCA does not necessarily oppose the discontinuation of PWSA's neighborhood-based program in 2020. OCA M.B., pp. 27-28. I&E explained in its Main Brief that its concerns regarding PWSA's plan to discontinue the neighborhood-based replacement program were addressed in the Joint Petition for Partial Settlement. I&E M.B., p. 96.

<sup>555</sup> PWSA R.B., p. 34.

PWSA remarks that UNITED urges the Commission to “direct PWSA either to continue the neighborhood-based program or develop a new program that offers free lead service line replacements to all customers.”<sup>556</sup> In reply to UNITED’s position, PWSA submits that UNITED fails to acknowledge: (1) PWSA’s Partial Settlement commitment to replace at least ten miles per year of SDWMR in Priority Lead Neighborhoods starting in 2021; and (2) that UNITED, as a member of CLRAC, will have the opportunity to consult with PWSA on the designation of those priority areas.<sup>557</sup> UNITED also fails to explain how a “new program” would work in conjunction with the SDWMR replacements and PWSA’s other programs, PWSA asserts.<sup>558</sup> PWSA acknowledges that the Authority’s water main inventory related to lead service line locations exhibits a high rate of failure, due to extensive corrosion.<sup>559</sup> As a result, PWSA argues, the focus on lead service line replacements will encounter water mains in extremely poor condition, which will exhibit high failure rates to install new services without main replacement. Construction related failures demand that PWSA replace water mains when the lead service lines are replaced. Therefore, until the SDWMR locations are known, the concurrent operation of a neighborhood-based program could be counterproductive and produce inefficiencies, PWSA contends.<sup>560</sup>

PWSA submits that the Authority’s future plans will be established based on the results of the lead line inventory (agreed to in the Joint Petition for Settlement), available resources and the location of SDWMR replacements. The Authority reiterates, “PWSA cannot adequately plan for a neighborhood LSLR until probably 2024 when it knows where all the 2020-2026 SDWMR areas will be.”<sup>561</sup> PWSA submits that through the Joint Petition for Settlement, the Authority has committed to evaluating future plans for lead service line

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<sup>556</sup> UNITED M.B., p. 2.

<sup>557</sup> Joint Petition § III.VV.2.a; *see also* § III.QQ.3.

<sup>558</sup> PWSA R.B., p. 35.

<sup>559</sup> *Id.*

<sup>560</sup> PWSA St. C-IRJ (Weimar), p. 17.

<sup>561</sup> *Id.*

replacements to meet its target. Accordingly, PWSA requests that the Commission not mandate PWSA to continue its neighborhood-based program.

**vi. Recommendation — Lead Remediation Issues**

The adverse health conditions associated with residential lead service lines is undisputed in this proceeding. The crux of the issue is the Commission’s jurisdiction over PWSA as distinguished from the Commission’s power to order PWSA to replace residential lead service lines. Thus, as in every case coming before this forum, the Commission must decide initially whether it has jurisdiction over the parties and the subject matter of the dispute. As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Public Utility Code (Code). 66 Pa.C.S. § 101, *et seq.* The Commission’s jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1967).

In this proceeding, PWSA argues the Commission lacks jurisdiction. PWSA reasons that “the level of lead in tap water is 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.”<sup>562</sup> Furthermore PWSA asserts, “Even if the Commission has jurisdiction to order PWSA to replace its lead service lines, the Commission lacks jurisdiction to order PWSA to replace customer-owned lead lines.”<sup>563</sup>

First, the undersigned ALJs will address PWSA’s novel argument that the issue at hand is one of “water quality” under the DEP’s jurisdiction. PWSA’s argument fails to recognize that water quality and water service are inseparable in this proceeding. There would be no need for water quality, if PWSA was not delivering water service to its customers.

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<sup>562</sup> PWSA M.B., p. 65.

<sup>563</sup> *Id.*

The legislature enacted Chapter 32 to place PWSA under the Commission's jurisdiction. This legislation as I&E notes is interrelated to the Commission's authority under Section 1501. Specifically, Section 1501 requires PWSA to do the following:

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>[564]</sup>

Section 1501 requires PWSA to make repairs and changes to its facilities necessary to ensure safe service and public safety. Under Sections 3205 and 1501 of the Code the Commission has authority over PWSA's service lines, as a service issue if the water quality is not safe. Accordingly, the Commission has jurisdiction over PWSA's water service.

Turning to PWSA's second argument, the undersigned agree with PWSA's position. The Commission lacks jurisdiction to order PWSA to replace customer-owned lead lines."<sup>565</sup> I&E, OCA and UNITED contend the Commission should compel PWSA to replace all residential lead service lines in its system under the Commission's safe and reasonable requirement and or authority to order PWSA to repair its facilities.<sup>566</sup> However, the opposing parties do not offer any specific statutory language or regulation which give the Commission the power to order PWSA to enter upon an owner's property and replace lead service lines without the owner's consent.

Importantly, federal regulations (the EPA's Copper and Lead Rules), which DEP enforces, specifically state a water utility has no obligation to replace the owner's privately-owned service line.

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<sup>564</sup> 66 Pa.C.S. § 1501; *also see* I&E R.B., p. 37.

<sup>565</sup> *Id.*

<sup>566</sup> 66 Pa.C.S. §§ 1501 and 3205.

A water system shall replace that portion of the lead service line that it owns. In cases where the system does not own the entire lead service line, the system shall notify the owner of the line, or the owner's authorized agent, that the system will replace the portion of the service line that it owns and shall offer to replace the owner's portion of the line. A system is not required to bear the cost of replacing the privately-owned portion of the line, nor is it required to replace the privately-owned portion where the owner chooses not to pay the cost of replacing the privately-owned portion of the line, or where replacing the privately-owned portion would be precluded by State, local or common law.<sup>567]</sup>

After due consideration of the above, the undersigned ALJs recommend that the Commission approve PWSA Lead Service Line Replacement Program, as revised by its Board of Directors on July 26, 2019.

**b. Replacement of Non-Residential Lead Service Lines Issue**

**i. PWSA's Position on the Replacement of Non-Residential Lead Service Lines**

PWSA's LSLR Policy does not include the replacing of non-residential lead service lines or any funding to the owners for the replacement of such lines. PWSA's Witness Weimar explained the rationale for the exclusion of these service lines. According to Witness Weimar, 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>568</sup> issue being addressed by 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, [Witness Weimar states]

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<sup>567</sup> 40 CFR Part 141.84(d).

<sup>568</sup> OSBA's witness Brian 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), p. 5; OSBA St. 1-S (Kalcic), p. 2; OSBA St. 1-SD (Kalcic), p. 2; OSBA St. 1-SR (Kalcic), pp. 2-3. Mr. Kalcic has misunderstood the "public health" issue.

(emphasis in original).”<sup>569</sup> PWSA argues that 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 of such replacements. Additionally, PWSA notes that the Authority’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.

Additionally, Witness Weimar claimed that, 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, according to Witness Weimar.<sup>570</sup> For non-residential customers, Witness Weimar posits, 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>571</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, submits PWSA.<sup>572</sup>

## **ii. OSBA’s Position on the Replacement of Non-Residential Lead Service Lines**

OSBA challenges PWSA’s lead service line replacement program on two grounds:

The OSBA’s position is that non-residential LSLs should be replaced as part of PWSA’s LSLRP and that non-residential

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<sup>569</sup> PWSA St. C-1R-Supp (Weimar), p. 4.

<sup>570</sup> PWSA St. C-1R-Supp (Weimar), pp. 3-5.

<sup>571</sup> PWSA St. C-1RJ (Weimar), pp. 9-10.

<sup>572</sup> *Id.* at 11.

customers should be able to avail themselves of the same benefits available to residential customers under PWSA's LSLRP. The OSBA also requests that, if and where applicable, non-residential customers be afforded a stipend of \$1,000 to offset the costs of replacing the customer-owned side of their lines running from the curb stop to the meter.

OSBA M.B., p. 1.

To support its position, OSBA relies upon the testimony of its witness, Brian Kalcic, an economist and principal of Excel Consulting. OSBA St. 1 at 1. Witness Kalcic agrees with PWSA's witness, Witness Weimar that the COA only requires the Authority to replace the PWSA publicly owned portions of LDLs. *Id.* at 2. However, Witness Kalcic opines, "If lead service lines are to be replaced because they are deemed a public health hazard, then all LSLs should be eligible for PWSA's LSL replacement program." *Id.* at 5.

Thus, OSBA submits that the Commission should modify PWSA's LSL program as follows.

First, the Commission should direct the Authority (i) to make all service lines eligible for its LSL replacement program, and (ii) to replace what would normally be classified as the "public-side" of such service lines (i.e., the portion of the service line that runs from the water main to the customer's curb stop) at no charge to the customer.

Second, to the extent that PWSA determines that it will continue to replace the "private-side" of LSLs post-2020, the Commission should order the Authority to expand the private-side replacement program to include larger residential and non-residential customers.

*Id.*

### iii. PWSA's Response to OSBA's Position

PWSA observes that only OSBA took a position on whether and how PWSA should be compelled to replace non-residential lead service lines.<sup>573</sup> PWSA notes that in its Main Brief, OSBA opposes PWSA's Lead Service Line Replacement Policy<sup>574</sup> which generally renders non-residential customers ineligible to participate in its lead service line replacement program. OSBA requests that the Commission order PWSA to expand its LSLR Policy to include all of PWSA's non-residential customers (and that PWSA offer nonresidential customers a \$1,000 stipend in lieu of the income-based reimbursement policy).<sup>575</sup> PWSA considers OSBA's positions on this issue fundamentally flawed and contends that they should be rejected.

PWSA argues that OSBA does not address the issue that whether PWSA should or should not replace a lead or galvanized iron service line is a water quality issue regulated by PADEP – not the Commission.<sup>576</sup> As previously noted, PWSA submits the Authority is under no regulatory obligation from PADEP (or any other entity) to replace private lead or galvanized iron service lines (which it does not own) – for either residential or non-residential customers.<sup>577</sup>

Consequently, the decision as to whether to replace non-residential lead service lines is fully within PWSA's discretion and falls outside of the Commission's regulatory authority, PWSA argues. Continuing its argument, PWSA states that OSBA erroneously claims that there is no valid reason to distinguish between residential and non-residential LSLs.<sup>578</sup> As

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<sup>573</sup> OSBA M.B., pp. 9-12. The other active parties did not address this issue in their Main Briefs. *See* OCA M.B., p. 28; I&E M.B., p. 96; UNITED M.B., p. 40 and PAWC's letter confirming that PAWC did not file a Main Brief in this matter.

<sup>574</sup> 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. PWSA M.B., p. 78, fn. 324.

<sup>575</sup> OSBA M.B., pp. 10-12

<sup>576</sup> PWSA M.B., p. 78.

<sup>577</sup> *Id.*

<sup>578</sup> OSBA M.B., p. 10.



explained in PWSA's Main Brief, non-residential service lines are structured differently than residential lines which warrants different treatment of the lines.<sup>579</sup> The primary distinction is that none of the non-residential customers that have a private lead or galvanized service line also have a lead or galvanized iron public side line, PWSA emphasizes.<sup>580</sup> Furthermore, PWSA argues that the Authority anticipates that orthophosphate will reduce lead levels in both residential and non-residential tap water to well below the lead action level established by federal and state drinking water regulations.<sup>581</sup>

Lastly, PWSA submits that OSBA did not attempt to challenge the Authority's explanation that its decision to replace residential private lead and galvanized lines can be attributed, in part, to the distinct financial positions of residential and non-residential customers.<sup>582</sup> Moreover, there is no evidence in the record that indicates that business owners are incapable of funding these replacements or that the cost that would be imposed on remaining ratepayers would be reasonable.<sup>583</sup> Thus, PWSA maintains that OSBA's positions on this issue should be rejected.

#### **iv. Recommendation — Replacement of Non-Residential Lead Service Lines Issue**

For the reasons stated above, that is the Commission does not have authority to order PWSA replace service lines that the Authority does not own,<sup>584</sup> the undersigned ALJs recommend that the Commission dismiss OSBA's request that the Commission order PWSA to include non-residential lead service lines in its LSLR Program.

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<sup>579</sup> PWSA M.B., pp. 77-78.

<sup>580</sup> PWSA M.B., p. 79; PWSA St. C-1R Supp (Weimar), p. 4.

<sup>581</sup> PWSA M.B., p. 61; 25 Pa.Code § 109.1102(a)(1).

<sup>582</sup> PWSA St. C-1RJ (Weimar), pp. 9-10.

<sup>583</sup> PWSA M.B., p. 80.

<sup>584</sup> 40 CFR Part 141.84(d).

## VI. CONCLUSIONS OF LAW

1. The Commission’s jurisdiction over PWSA became effective on April 1, 2018. 66 Pa. C.S. § 3202(a)(1).

2. The provisions in the Public Utility Code apply to PWSA in the “same manner as a public utility.” 66 Pa.C.S. § 3202(a)(1).

3. PWSA, as a municipal authority, is an independent agency of the Commonwealth of Pennsylvania. *Commonwealth v. Lucas*, 534 Pa. 293, 632 A.2d 868 (1993).

4. PWSA was required to file a Compliance Plan with the Commission, within 180 days of April 1, 2018, that includes provisions designed to bring the following areas into compliance with the Code, the Commission’s regulations and orders, and other applicable rules: “existing information technology, accounting, billing, collection and other operating systems and procedures.” PWSA’s Compliance Plan was also required to include a long-term infrastructure improvement plan. 66 Pa.C.S. § 3204(b).

5. PWSA’s plan for compliance must ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service for its ratepayers. 66 Pa.C.S. § 320(c).

6. If the Commission determines PWSA’s Compliance Plan fails to ensure and maintain the provision of adequate, efficient, safe, reliable, and reasonable service, it may order PWSA to file a new or revised compliance plan. 66 Pa.C.S. § 3204(c).

7. PWSA, as the proponent of its Compliance Plan, bears the burden of proof to establish that its plan to come into compliance with the Code, Commission regulations, and orders ensures and maintains the provision of adequate, efficient, safe, reliable and reasonable service. 66 Pa.C.S. § 332(a); 66 Pa.C.S. § 3204; Pa. P.U.C. v. PWSA, R-2018-3002645 et al., *Joint Petition for Settlement*, p. 24, ¶ H(2).

8. When parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

9. The Joint Petition for Partial Settlement is in the public interest.

10. PWSA has failed to meet its burden of proof with respect to its failure to set forth a compliance plan that (1) terminates its 1995 Cooperation Agreement with the City of Pittsburgh in favor of transacting with the City on an arm's length, business-like transaction basis; (2) requires PWSA to become responsible for the cost of all meter installation, including the installation of meters at City properties, in accordance with 52 Pa.Code § 65.7; (3) agrees to introduce a flat rate, at minimum the customer charge for the customer's class, for all unbilled customers in its next base rate case, and, as customers are metered, to immediately bill full usage; and (4) consistent with the Public Utility Code and Commission regulations, complies with 52 Pa.Code §§ 65.21-65.23 regarding a utility's duty to make line extensions, and revise its tariff and operations accordingly.

11. PWSA remains non-compliant with Chapter 32 until the 1995 Cooperation Agreement is terminated and the Commission has either approved a new Cooperation Agreement, or PWSA is transacting with the City on an arm's-length, as-needed basis. 66 Pa.C.S. § 3204; 66 Pa.C.S. § 1301; 66 Pa.C.S. § 1501.

12. PWSA's plan to split the costs of meter installations with the City on a 50/50 basis, while it incurs the full cost of installation for all other customers, does not comply with the Commission's regulations for metered service. 52 Pa.Code § 65.7.

13. PWSA's plan to split the costs of meter installations with the City on a 50/50 basis, while it incurs the full cost of installation for all other customers, does not comply with the Public Utility Code's prohibition against unreasonable rate discrimination. 66 Pa.C.S. § 1304.

14. PWSA's step-billing proposal for unmetered and unbilled City properties does not comply with the Public Utility Code's requirement to charge tariffed rates. 66 Pa.C.S. § 1303.

15. PWSA's step-billing proposal for unmetered and unbilled City properties does not comply with the Public Utility Code's prohibition against unreasonable rate discrimination. 66 Pa.C.S. § 1304.

16. The Municipality Authorities Act, 53 Pa.C.S. §§5601-5623, provides for certain powers that an authority may exercise, including those related to line extensions. 53 Pa.C.S. §§ 5601-5623; 53 Pa.C.S. § 5607(d).

17. Commission regulations require water utilities to include as part of their tariff conditions under which service will be extended to applicants. 52 Pa.Code § 65.21.

18. Commission regulations outline rules regarding associated customer advance financing and payments. 52 Pa.Code § 65.22.

19. Rules of statutory construction require that, whenever a general provision in a statute is in conflict with a special provision in the same or another statute, both provisions should be construed to be operable, if possible. 1 Pa.C.S. § 1933.

20. Rules of statutory construction provide that if the two provisions are irreconcilable the special provision shall prevail to the exclusion of the general provision, unless the general provision was (1) enacted later and (2) it is the manifest intention of the General Assembly that such general provision shall prevail. 1 Pa.C.S. § 1933.

21. Chapter 32 of the Public Utility Code requires PWSA to follow Commission regulations regarding line extensions, instead of the Municipality Authorities Act. 1 Pa.C.S. § 1933.

22. PWSA must comply with the Commission's regulations regarding line extensions. 52 Pa.Code §§ 65.21 and 65.22.

23. That the Petition for Approval of a Second Long-Term Infrastructure Improvement Plan (LTIIP) filed by PWSA and as modified by PWSA is approved and is in accordance with the law and in the public interest – until changed on a going-forward basis. 66 Pa.C.S. §1352(a).

24. The Commission's authority to interfere in the internal management of a utility company is limited. *Bell Telephone Co. of Pennsylvania v. Driscoll*, 343 Pa. 109, 21 A.2d 912 (1941); *Northern Pennsylvania Power Co. v. Pa. Pub. Util. Comm'n*, 333 Pa. 265, 5 A.2d 133 (1939); *Coplay Cement Manufacturing Co. v. Public Service Commission*, 271 Pa. 58, 114 A. 649 (1921). The Commission is not empowered to act as a super board of directors for the public utility companies of this state. *See Metropolitan Edison Company v. Pa. Pub. Util. Comm'n*, 62 Pa.Cmwlth. 460, 466-467, 437 A.2d 76, 80 (1981).

25. Under the EPA's Copper and Lead Rules, which DEP enforces, a water utility has no obligation to replace privately-owned service lines. 40 CFR Part 141.84(d).

## **VII. ORDER**

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Partial Settlement that the Pittsburgh Water and Sewer Authority, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, the Office of Consumer Advocate, the Office of Small Business Advocate, Pittsburgh UNITED and Pennsylvania-American Water Company have filed at Docket

Nos. M-2018-2640802, M-2018-2640803, P-2018-3005037, and P-2018-3005039, including all terms and conditions stated therein, be approved.

2. That a revised Compliance Plan be filed consistent with the determinations made regarding the litigated issues in this proceeding, specifically as follows: (1) that the 1995 Cooperation Agreement be terminated, and business transactions conducted with the City of Pittsburgh be required to occur on a transactional basis until a new cooperation agreement is filed and approved by the Commission; (2) that the Compliance Plan be revised to require the Pittsburgh Water and Sewer Authority to become responsible for the cost of all meter installation in accordance with 52 Pa.Code § 65.7; (3) that the Compliance Plan be revised to require the Pittsburgh Water and Sewer Authority to introduce a flat rate, at minimum, the customer charge for the customer's class, for all unbilled customers in its next base rate case, and, as customers are metered, to immediately bill full usage; and (4) that the Compliance Plan be revised to require the Pittsburgh Water and Sewer Authority to comply with 52 Pa.Code §§ 65.21-65.23 regarding a utility's duty to make line extensions.

3. That the Pittsburgh Water and Sewer Authority shall file any necessary tariffs or tariff supplements consistent with the final order issued in this proceeding within 60 days of the entry of the final order.

4. That the Pittsburgh Water and Sewer Authority, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, the Office of Consumer Advocate, the Office of Small Business Advocate, Pittsburgh UNITED and Pennsylvania-American Water Company shall comply with the terms of the Joint Petition for Partial Settlement submitted in this proceeding as though each term therein were the subject of an individual ordering paragraph.

5. That the Petition for Approval of a Second Long-Term Infrastructure Improvement Plan filed by the Pittsburgh Water and Sewer Authority and as modified by the

Pittsburgh Water and Sewer Authority is approved consistent with the Joint Petition for Partial Settlement and the final order of the Commission.

6. That the docket at Docket Nos. M-2018-2640802, M-2018-2640803, P-2018-3005037, and P-2018-3005039 shall be marked closed.

Date: October 21, 2019

/s/  
\_\_\_\_\_  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge

/s/  
\_\_\_\_\_  
Conrad A. Johnson  
Administrative Law Judge