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December 3, 2019

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265


Re: Implementation of Chapter 32 of the Public Utility Code RE: Pittsburgh Water
and Sewer Authority; Docket Nos. M-2018-2640802 and M-2018-2640803

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

Dear Secretary Chiavetta:

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

Sincerely,



Sarah C. Stoner

SCS/jls
Enclosure

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

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

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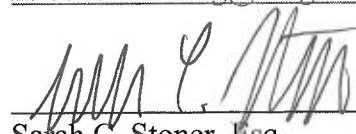
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY EXCEPTIONS OF THE
PITTSBURGH WATER AND SEWER AUTHORITY**

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I. INTRODUCTION

The Pittsburgh Water and Sewer Authority (“PWSA”) submits these Reply Exceptions to respond to several issues raised by the other parties in their Exceptions to the October 21, 2019 Recommended Decision (“RD”) of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Conrad A. Johnson (collectively, the “ALJs”). These Reply Exceptions respond to the Exceptions of I&E, OCA, OSBA and UNITED on issues relating to PWSA’s Lead Service Line Replacement Program and I&E’s Exception on the proposed allocation of fire hydrant costs to the City of Pittsburgh (“City”).¹ PWSA submits that the other parties merely summarize their own evidence and arguments and ignore the evidence presented by PWSA and credited by the ALJs. PWSA submits that a full and fair review of the RD and the record will demonstrate the lack of merit in the other parties’ exceptions, as summarized below.

PWSA supports the ALJs’ finding that PWSA’s proposed allocation of public fire hydrant costs to the City of Pittsburgh (“City”) is not before the Commission in this proceeding. I&E incorrectly asserts that PWSA has requested in this case that the Commission approve the receipt of payments from the City at levels below those that will be allocated to the City as part of its next rate case.² PWSA’s proposal has consistently been to present a rate design reflecting allocation of 25% of the costs of public fire hydrants to the City (the 25% limit is required by the Public Utility Code) in the next rate case while reserving the right to propose a phase-in-period for payment at that time.³ Accordingly, the Commission should not disturb the ALJs

¹ Parties that submitted Exceptions in this proceeding include: The Pittsburgh Water and Sewer Authority (“PWSA”); the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and Pittsburgh UNITED (“UNITED”).

² I&E Exceptions at 7, n. 21.

³ PWSA M.B. at 29, PWSA R.B. at 12; Partial Settlement Section 111.I.1 at 19; PWSA St. C-1 (Weimar) at 31.

determination that there is no proposal before the Commission regarding a plan for PWSA to receive payments for those costs in an amount less than what would be allocated to the City in a future rate case.⁴

PWSA also supports the ALJs' determination that the Commission does not have jurisdiction to order PWSA to replace customer-owned lead service lines. The Exceptions of I&E, OCA, OSBA and UNITED would inappropriately expand the Commission's jurisdiction to allow it to direct PWSA to replace service lines that PWSA does not own or have responsibility for. If the Commission were to adopt the recommendations of the other parties, it would be contrary to the Public Utility Code, federal regulations, Commission precedent, and recent legislation. For overlapping reasons, the Commission should deny the Exceptions filed by the Office of Small Business Advocate ("OSBA"), as the ALJs appropriately concluded that the Commission lacks jurisdiction to direct PWSA to include non-residential lead service lines in its Lead Service Line Replacement Program ("LSLR Program").

The other parties' exceptions that urge the Commission to modify or interfere with PWSA's LSLR Program, including its income-based reimbursement policy, should also be rejected. The Commission should deny their exceptions and, instead, endorse PWSA's current policies which set forth a comprehensive, fair and reasonable approach to replacing lead service lines given its financial and other resources currently available.

Lastly, PWSA encourages the Commission to reject UNITED's demand that the Commission revise, replace or vacate Findings of Fact set forth by the ALJs in the Recommend

⁴ PWSA has not asked the Commission to approve a specific payment plan for the to-be allocated costs as part of this proceeding although that issue is one that has been under negotiation with the City as part of the renegotiation of the City Cooperation Agreement. As such, the Commission may alternatively elect to defer this issue to the to-be-opened proceeding regarding the new City Cooperation Agreement.

Decision. In proposing that the Commission include additional or revised Findings of Fact, UNITED summarized its own evidence and arguments and unfairly criticizes the ALJs.

For the reasons set forth below, and more fully discussed in PWSA's Initial and Reply Briefs, the Commission should deny the exceptions raised by the other parties.

II. REPLY TO EXCEPTIONS

A. Reply Exception No. 1: The ALJs Properly Found That PWSA's Proposed Allocation of Public Fire Hydrant Costs to the City is Not Currently Before the Commission

In its Exceptions, I&E asks the Commission to prohibit PWSA from agreeing to payments from the City of Pittsburgh for any amounts less than what may be approved by the Commission in PWSA's next rate case.⁵ According to I&E, PWSA proposed in this proceeding to begin billing the City for amounts less than what it would propose to allocate to the City for public fire hydrants in its next rate case.⁶ This is not correct. PWSA's proposal and commitment on this issue has always been and remains to present a rate design reflecting allocation 25% of the costs of public fire hydrants (the statutory limit for public fire hydrant costs imposed by Code Section 1328)⁷ to the City in the next rate case while reserving the right to propose a phase-in period for payment at that time.⁸ This is in contrast to the specific payment plan proposals PWSA has asked the Commission to approve regarding the installation costs for City meter installation and usage for newly installed City meters. The confusion may stem from the fact that this particular issue is another one that has been a part of the negotiations between

⁵ I&E Exceptions at 8.

⁶ I&E Exceptions at 7, n. 21.

⁷ 66 Pa. C.S. § 1328(b)).

⁸ PWSA M.B. at 29, PWSA R.B. at 12; Partial Settlement Section III.I.1 at 19; PWSA St. C-1 (Weimar) at 31.

the PWSA and the City regarding a new cooperation agreement. While PWSA noted this in both its main and reply briefs, PWSA made no specific proposal in this case asking the Commission to approve the receipt of payments from the City for amounts less than what would be allocated to the City as part of a future rate case. Thus, the ALJs are correct that there is no proposal before the Commission now regarding a plan to receive payments in an amount less than what would be allocated to the City in a future rate case and I&E's Exception must be denied.

Notwithstanding this, and to the extent the Commission elects to take action on this issue, then PWSA would respectfully request that the Commission defer resolution of this issue to a future Cooperation Agreement proceeding that will likely be opened in the next few months. PWSA expects to file the new Cooperation Agreement with the Commission under Section 507 by the end of this month. Like the other two issues, this is one that will be directly before the Commission as it reviews the Cooperation Agreement and the Commission can decide – at that time – how to address the proposals. While the Commission may elect in that proceeding to approve or reject a payment plan for the costs of City public fire hydrants with the specific amounts to be determined as part of a future rate case allocating costs, the ALJs were correct in concluding that no payment plan for the City related to these costs is currently before the Commission.

B. Reply Exception No. 2: The ALJs Appropriately Determined That The Commission Lacks Jurisdiction To Order PWSA To Replace Customer-Owned Lead Service Lines

The ALJs properly found that the “Commission lacks jurisdiction to order PWSA to replace customer-owned lead lines.”⁹ I&E Exception No. 3, OCA Exception No. 2, OSBA

⁹ RD at 208.

Exception No. 1 and UNITED Exception No. 1 object to the ALJs' recommendation on the basis that the ALJs misinterpreted Sections 1501 and 3205(a) of the Pennsylvania Public Utility Code as restricting the Commission's jurisdiction over lead service lines to only those owned by PWSA. In fact, the Recommended Decision was entirely correct. In addition to the fact that the PUC does not have jurisdiction over lead service line replacement issues because they involve "water quality," the ALJs properly conclude that the Commission also lacks jurisdiction to order PWSA to replace customer-owned lead service lines because any such order would be contrary to Sections 1501 and 3205(a) of the Public Utility Code, federal regulations, Commission precedent, and recent legislation.

Section 1501 of the Public Utility Code requires that "[e]very public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public."¹⁰

Section 3205(a) of the Public Utility Code provides that "[t]he 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...."¹¹

Section 3205(a) makes clear that the Commission may require maintenance, repair or replacement of facilities and equipment to ensure compliance with Section 1501.¹² Based on the clear language in Section 3205(a), the provision does not expand the scope of facilities beyond those covered by Section 1501. Section 1501 is clearly

¹⁰ 66 Pa.C.S. § 1501.

¹¹ 66 Pa.C.S. § 3205(a).

¹² 66 Pa.C.S. § 3205(a).

limited to facilities and equipment owned by a utility. The definition of the term “facilities” in the Public Utility Code is “all the plant and equipment of a public utility...”¹³ As customer-owned lead service lines are not a utility’s facilities or services, the ALJs appropriately concluded that the Commission does not have jurisdiction to direct PWSA to replace customer-owned lead service lines.¹⁴ Commission precedent also supports the ALJs’ conclusion. The Commission has consistently held that private service lines are NOT the responsibility of the utility (with the resulting cost of repair or replacement having to be absorbed by utility’s ratepayers).¹⁵ PWSA has not found a single case in which the Commission has imposed the cost of repairing or maintaining private service lines on a utility (and, thus, on a utility’s other ratepayers).¹⁶

Certainly, the parties’ assertions that the Commission must be able to require PWSA to replace lead service lines that are customer-owned is not a reasonable or practical reading of Sections 1501 and 3205(a). PWSA does not own customer-owned lead service lines and neither the Commission nor PWSA has the authority to require customers to consent to their replacement. The ALJs acknowledge this in their support of their recommendation: “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.”¹⁷

¹³ 66 Pa.C.S. § 102.

¹⁴ RD at 208.

¹⁵ See, *PUC v. Mercer Gas*, Docket No. R-80091297, Opinion and Order entered August 21, 1981; 1981 Pa. PUC LEXIS 40.

¹⁶ PWSA R.B. at 26.

¹⁷ RD at 208.

While PWSA supports the ALJs' determination that the Commission does not have jurisdiction to order PWSA to replace customer-owned lead lines, PWSA excepted to their initial conclusion that the Commission has authority over PWSA's service lines "as a service issue if the water quality is not safe."¹⁸ OCA implies that the "adequate, efficient, safe, and reasonable service and facilities" standard under Section 1501 authorizes the Commission to direct PWSA to replace public and private service lines.¹⁹ For the reasons set forth in PWSA Exception No. 4 (primarily that the Commission lacks jurisdiction to order PWSA to replace public and private side lead service lines to address a water quality issue),²⁰ OCA's implications should be disregarded.

I&E's unsupported position "concedes" that the Commission may order PWSA to replace privately-owned lead lines, with owners' consent, only in circumstances where replacement is necessary to address public health and safety concerns.²¹ I&E's argument should be rejected. As explained in PWSA's Exceptions and its main and reply briefs, Commission and court decisions establish that jurisdiction to direct actions to address water quality issues rests with the Pennsylvania Department of Environmental Protection ("PA DEP").²² The Commission should adopt the recommendation of the ALJs that the Commission does not have jurisdiction to direct PWSA to replace customer-owned lines. The ALJs' recommendation properly recognized that federal regulations designed to address the public health issue of making a customer's water

¹⁸ PWSA Exceptions at 30.

¹⁹ OCA Exceptions 13-16.

²⁰ PWSA Exceptions at 27-36.

²¹ I&E Exceptions at 18-19.

²² PWSA M.B. at 65-69; PWSA R.B. at 23-25; PWSA Exception No. 4.

quality acceptable (the EPA’s Copper and Lead Rules), “specifically state a water utility has no obligation to replace the owner’s privately-owned service line.”²³

To PWSA’s knowledge, the Commission has never ordered a utility to take responsibility for replacing private service lines of its customers.²⁴ The Pennsylvania General Assembly added a provision that permits a regulated water utility to recover the cost of replacing customer-owned lead service lines in its rates.²⁵ The legislation establishes that if a public utility replaces a customer-owned lead service line it may recover the cost of such a replacement in its rates.²⁶ The legislation appears to support the conclusion that the Commission did not have jurisdiction to permit recovery of customer-owned lead service line replacements in a utility’s rates prior to this new legislative authority. In addition, the legislation reflects that the Commission does not have jurisdiction to order private facility replacements. In other words, the legislation contains no mandates for replacement of customer-owned lead service lines – those replacements are voluntary.²⁷

UNITED cites the aforementioned legislation as support for its position that the Commission has jurisdiction to direct, review and modify plans for the replacement of customer-owned lead service lines.²⁸ UNITED’s misleading interpretation of the legislation should be ignored. Pursuant to the legislation, PWSA supports the Commission’s review of how water utilities recover the costs of replacing customer-owned lead service lines in their rates. However,

²³ RD at 208.

²⁴ PWSA R.B. at 26.

²⁵ 66 Pa.C.S. § 1311.

²⁶ 66 Pa.C.S. 1311(b).

²⁷ 66 Pa.C.S. § 1311.

²⁸ UNITED Exceptions at 20-21.

questions regarding a water utility's obligation to replace lead service lines or the technical manner in which such replacements will occur is beyond the Commission's jurisdiction.

Recent legislation applicable to municipal authorities provides that "an authority may perform the replacement or remediation of private water laterals and private sewer laterals for customers of the authority if the authority determines that the water replacement or remediation will benefit the public health, public water supply system or public sewer system."²⁹ OCA challenges PWSA's position that the foregoing language supports the finding that the replacement of customer-owned lead service lines is discretionary and is outside the jurisdiction of the Commission to direct.³⁰ OCA implies that because PWSA has decided that replacing customer-owned lead service lines will benefit the public health that the Commission has jurisdiction over the implementation of PWSA's replacement of customer-owned lead service lines.³¹ OCA's haphazard interpretation ignores the plain language of the legislation which clearly makes replacements voluntary – not mandatory.³² The legislation also acknowledges PA DEP's authority in this area.³³ OCA's implication should be disregarded.

PWSA made the voluntary determination via its LSLR Program to provide for the replacement of residential customer-owned lead service lines. PWSA's voluntary policy to replace residential customer-owned lead service lines goes beyond any legal or regulatory requirement. Notwithstanding these voluntary actions, the complaining parties want the PUC to

²⁹ PWSA M.B. at 71, n. 296; 72 P.S. § 1719-E(c)(1) (emphasis added).

³⁰ OCA Exceptions at 18.

³¹ OCA Exceptions at 18.

³² 72 P.S. § 1719-E(c)(1) (providing that "an authority may...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.").

³³ 66 Pa.C.S. § 1311(b)(4).

order PWSA to do more – and to replace private lead service lines in the manner that they prefer. For all the reasons discussed above, the Exceptions of the other parties fail to offer any reason to reject the ALJs’ determination that the Commission does not have jurisdiction to order PWSA to replace customer-owned lead service lines. As the other parties have not provided any legal justification or record support for any other outcome, the Commission should deny their Exceptions.

C. Reply Exception No. 3: The ALJs Appropriately Concluded that the Commission Lacks Jurisdiction to Order PWSA to Include Non-Residential Lead Service Lines in its Lead Service Line Replacement Program

The ALJs properly found: (1) that the Commission does not have jurisdiction to order PWSA to replace customer-owned lead service lines; and (2) that the Commission should not modify or interfere with PWSA’s LSLR Program.³⁴ Non-residential customers are generally ineligible to participate in PWSA’s LSLR Program. As indicated in PWSA’s Main Brief, PWSA is under no regulatory obligation from PA DEP, the Commission, or any other entity, to replace private lead service lines – for either residential or non-residential customers.³⁵ In recommending that the Commission dismiss OSBA’s request that the Commission order PWSA to include non-residential lead service lines in its LSLR Program, the ALJs appropriately cited the lack of Commission authority to order PWSA to replace service lines that it does not own.³⁶

In support of its objection to the ALJs’ recommendation, OSBA claims that non-residential customers should be afforded the same treatment and benefits that residential customers are afforded as the health concerns presented by lead service lines are the same

³⁴ RD at 208.

³⁵ PWSA M.B. at 56, 78.

³⁶ RD at 213.

regardless of customer class.³⁷ OSBA's claims ignore distinctions between residential and non-residential service lines and how those distinctions impact the public health hazard posed by lead service lines.

As previously explained by PWSA, non-residential service lines are structured differently than residential lines which warrants different treatment of the lines.³⁸ PWSA's LSLR Program provides for the replacement of customer-owned residential lead service lines when the public side is being replaced to avoid "partial" replacements (i.e. replacing one part of the lead service line and not the other).³⁹ The avoidance of "partial" replacements is the public health issue being addressed by PWSA in its voluntary decision to cover private lead service line replacements. *Significantly, 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.*⁴⁰ As 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.⁴¹

PWSA's corrosion control program (the use of orthophosphate) will reduce lead levels in both residential and non-residential tap water to below the Lead and Copper Rule lead action level. Without the concern about a "partial" replacement increasing lead levels, there is no water quality reason for PWSA to initiate a non-residential customer-owned lead service line replacement program at this time.⁴²

³⁷ OSBA Exceptions at 5-6.

³⁸ PWSA R.B. at 37; PWSA M.B. at 82.

³⁹ PWSA M.B. at 82.

⁴⁰ PWSA R.B. at 37; PWSA M.B. at 82; PWSA St. C-1R Supp (Weimar) at 4.

⁴¹ PWSA M.B. at 82.

⁴² PWSA M.B. at 82.

In addition to the distinction between residential and non-residential customer service lines, residential and non-residential customers generally have different financial capabilities. Replacing a private lead service line can reasonably be viewed by non-residential customers as a cost of doing business. A non-residential customer should be able to pass on the cost of a lead service line replacement in the prices it charges its customers. No evidence was presented in this proceeding that nonresidential customers are incapable of funding these replacements or that the cost of a PWSA funded replacement (that would be imposed on remaining ratepayers) would be reasonable.⁴³

PWSA submits that its decision to generally exclude nonresidential customers from its LSLR Program is reasonable. As the Commission does not have jurisdiction to order PWSA to replace customer-owned lead service lines, the Commission should defer to the discretion of PWSA to generally exclude non-residential customers from its LSLR Program.

D. Reply Exception No. 4: The ALJs Properly Recommended that the Commission Not Interfere or Modify PWSA's 2019 Lead Service Line Replacement Program, Including its Income-Based Reimbursement Program

1. PWSA's Lead Service Line Replacement Program

The ALJs properly recommended that the Commission not interfere or modify PWSA's July 26, 2019 LSLR Program as the Commission lacks jurisdiction to order PWSA to replace customer-owned lead service lines.⁴⁴ PWSA's comprehensive plan to address lead remediation issues is comprised of PWSA's LSLR Program and the lead remediation components of the Joint Petition for Settlement (which were recommended for approval by the ALJs). PWSA's comprehensive approach to lead remediation issues goes well beyond any legal or regulatory

⁴³ PWSA R.B. at 38.

⁴⁴ RD at 207-209, 213.

requirements.⁴⁵ The Exceptions of I&E, OCA, UNITED and OSBA take issue with not only PWSA's LSLR Program, but also a subprogram set forth in the LSLR Program to reimburse residential customers when they elect to replace their private side line on their own, using an income-based sliding scale.⁴⁶ PWSA urges the Commission to reject their Exceptions and to leave PWSA's LSLR Program intact, as recommended by the ALJs.

I&E, OCA and UNITED call for the Commission to reject PWSA's income-based reimbursement policy in favor of a "comprehensive plan" to replace lead service lines in its system at no direct cost to customers.⁴⁷ Contrary to their exceptions, PWSA's LSLR Program (including its income-based reimbursement program), paired with the Partial Settlement in this proceeding, *already reflects* a comprehensive plan for addressing lead remediation issues.⁴⁸ PWSA has committed to a Small Diameter Water Main Replacement ("SDWMR") Program that will eventually remove 100% of the residential public side lead service lines.⁴⁹ 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 2026.⁵⁰ Significantly, PWSA voluntarily elected to continue to replace all private-side residential lead service lines whenever it replaces the "public side."⁵¹

⁴⁵ PWSA M.B. at 14, 58.

⁴⁶ I&E Exception No. 4; OCA Exception No. 2; UNITED Exceptions Nos.1-2; and OSBA Exception No. 3.

⁴⁷ I&E Exceptions at 18; OCA Exceptions at 5, 19; UNITED Exception at 15. PWSA specifically objects to UNITED's plea that the Commission require PWSA to revise its Compliance and LTIP and that the revised plan be available for public comment and be subject to Commission review and approval in an on-the-record proceeding. UNITED Exceptions at 31. UNITED's request should be dismissed as it is not reasonable or in the public interest.

⁴⁸ Joint Petition for Partial Settlement at 43-53.

⁴⁹ PWSA Hearing Exh. 3 (LTIP) at 28, Table 2-8; PWSA R.B. at 27.

⁵⁰ PWSA M.B. at 57.

⁵¹ PWSA R.B. at 33; PWSA M.B. at 60; Exhibit RAW/C-46.

UNITED's suggestion that the Commission require PWSA to develop a "more fair" replacement program by continuing the neighborhood based program or alternatively, propose a substitute for the neighborhood-based program, should be rejected.⁵² As explained in PWSA's Reply Brief, PWSA cannot adequately plan for a neighborhood-based program until all of the 2020-2026 SDWM replacement locations are known, which will be 2024 at the earliest. As such, PWSA committed to evaluating future plans for lead service line replacements (including a potential future neighborhood-based program) based on the results of its inventory of lead lines, available resources and the location of SDWM replacements.⁵³

PWSA's SDWM Replacement Program is an efficient way to replace aging infrastructure in PWSA's water system, which requires significant capital investment to maintain safe and reliable service to customers. Replacement of SDWMs will reduce main breaks and leaks, improve water quality and pressure to customers, improve available fire flows and reduce non-revenue water.⁵⁴ Due to PWSA's limited financial resources and various other critical efforts to reduce lead levels in the water supply (including the application of orthophosphate), PWSA's current plans and continued evaluation of future private lead line replacements is reasonable.⁵⁵ PWSA requests that the Commission not modify the LSLR Program to continue PWSA's neighborhood based program or another alternative program as it does not have jurisdiction to do so and it would be premature and unreasonable to direct such action at this time.⁵⁶

⁵² UNITED Exceptions at 30.

⁵³ PWSA R.B. at 35-36; PWSA St. C-IRJ (Weimar) at 17.

⁵⁴ PWSA St. No. C-1 (Weimar) at 67.

⁵⁵ PWSA St. No. C-1 (Weimar) at 59.

⁵⁶ PWSA R.B. at 35-36; PWSA St. C-IRJ (Weimar) at 17.

2. PWSA's Income-Based Reimbursement Policy

PWSA established an income-based reimbursement policy after considering the “availability of public funds, equipment, personnel and facilities and the competing demands of the authority for public funds, equipment, personnel and facilities.”⁵⁷ Based on its analysis of demographics in its service territory, PWSA's income-based parameters will fully reimburse over 50% of households in its service territory for a private-side lead line replacement initiated by the customer, and provide 75% of households with a reimbursement of 50% or greater.⁵⁸ Various claims suggesting that this policy (which, again, was voluntarily established by PWSA and is elective for customers) is unreasonable or unfair have been adequately addressed by PWSA.

PWSA's income-based reimbursement program offers financial assistance to customers that do not want to wait for a replacement via the SDWMR program or a potential future neighborhood-based program.⁵⁹ Contentions that the reimbursement nature of the program will deter or reduce replacements should be disregarded.⁶⁰ PWSA's LSLR Program was formulated to address all known residential lead service lines in PWSA's system.⁶¹ These lines will eventually be replaced at no direct cost to the customer, if the customer is willing to wait until

⁵⁷ PWSA St. No. C-1RJ (Weimar) at 5-6.

⁵⁸ PWSA M.B. at 63, 73.

⁵⁹ PWSA M.B. at 73, 77; PWSA R.B. at 31.

⁶⁰ OCA Exceptions at 5; I&E Exceptions at 28; UNITED Exceptions at 27.

⁶¹ FOF 51.

the SDWMR program addresses them.⁶² Recall that PWSA's corrosion control program will, in the meantime, reduce tap water lead levels to below the Federal Action Level.⁶³

UNITED's complaint that the customer must initiate the replacement of their own private-side line under the income-based reimbursement program overlooks the goal of the program.⁶⁴ The subprogram is specifically designed for customers that do not want to wait for a replacement via PWSA's SDWMR program or any future program.⁶⁵ For those customers who do not want to wait for a PWSA replacement of their private-side line, the program apportions some responsibility to the customer (who owns the private-side lead service line), recognizing that the private-side line is entirely the responsibility of the owner.⁶⁶ To alleviate any residual concerns, PWSA offered to consult with its Community Lead Response Advisory Committee (which UNITED is a member of), regarding development of its outreach program. PWSA intends to modify its existing programs to optimize the number of eligible customers who are informed and participate in PWSA's replacement program.⁶⁷

PWSA has also sufficiently addressed the concerns of I&E and UNITED that the income-based policy will require households to cover the cost of replacement upfront.⁶⁸ PWSA expressed a willingness to reform its income-based reimbursement policy to address this concern

⁶² PWSA R.B. at 31.

⁶³ See Partial Settlement at § III.M.2.c, III.XX; PWSA St. C-1RJ (Weimar) at 17-18; PWSA St. C-1R-Supp (Weimar) at 7; PWSA St. C-1SD (Weimar) at 22-23; PWSA St. C-1R (Weimar) at 2-3, 37-38; PWSA St. C-1 (Weimar) at 48-49.

⁶⁴ UNITED Exceptions at 27.

⁶⁵ PWSA M.B. at 73; PWSA R.B. at 31

⁶⁶ PWSA M.B. at 64.

⁶⁷ PWSA St. C-1RJ (Weimar) at 11-12; PWSA M.B. at 77.

⁶⁸ I&E Exceptions at 27-31; UNITED Exceptions at 26.

so that customers would not need to pay for the replacement upfront and await reimbursement.⁶⁹ The opposing parties complain that PWSA has not definitively committed to reforming its income-based reimbursement program in this way but conveniently omit that the incorporation of the program into PWSA's LSLR Program (on July 26, 2019) provided PWSA little time to fully explore and share with the parties in testimony specific details regarding its implementation.⁷⁰

Claims that the administrative costs of the income-based reimbursement program are too high should also be rejected. PWSA made a rough estimate that it would expend \$1,000 for administrative costs to enroll each low and moderate income customer in the program.⁷¹ While I&E and OCA object to the anticipated administrative costs,⁷² they fail to acknowledge a key point – that having the customer's private contractor undertake the replacement will reduce the relative cost of line replacement compared to PWSA being entirely responsible for the replacements.⁷³ Even with the anticipated administrative costs, PWSA expects that ratepayers will save \$8 - \$18 million if its income-based reimbursement program goes forward.⁷⁴ To the extent PWSA's conservatively estimated administrative costs for the program are reduced, the cost savings to ratepayers would increase.⁷⁵

The Commission should reject OCA's suggestion that PWSA's income-based reimbursement program is inconsistent with Section 1304 of the Public Utility Code, which

⁶⁹ PWSA R.B. at 29; PWSA St. C-1RJ (Weimar) at 11-12; PWSA M.B. at 73-74.

⁷⁰ I&E Exceptions at 29-30.

⁷¹ PWSA R.B. at 29; UNITED St. C-1SUPP-R (Miller) at Appendix A.2.

⁷² OCA Exceptions at 9-10; I&E Exceptions at 26-27.

⁷³ PWSA M.B. at 63-64; PWSA St. C-1RJ (Weimar) at 9-10.

⁷⁴ Exhibit RAW-C-46 (July 2019 Policy) at § 3.2; PWSA St. C-1SD (Weimar) at 32; UNITED St. C-1 Supp-R (Miller).

⁷⁵ PWSA M.B. at 64.

prohibits “unreasonable discrimination in rate making.”⁷⁶ As previously expressed, PWSA’s income-based reimbursement program is not an issue that is within the Commission’s jurisdiction to review and, therefore, is not subject to 66 Pa.C.S. § 1304.⁷⁷ Nonetheless, PWSA’s LSLR Program, including its income-based reimbursement program, is reasonable, nondiscriminatory and consistent with the Public Utility Code.⁷⁸ Of course, Section 1304 of the Public Utility Code bars unreasonable discrimination, a fact apparently overlooked by the parties demanding that PWSA do still more to remediate lead. PWSA’s LSLR Program is reasonable as it replaces the customer-owned portion of a residential customer’s lead service line when replacing the PWSA-owned public portion of the line. Even when PWSA is not replacing the public portion of a service line, its policy reimburses customers for a customer initiated replacement of their private line based on their income.⁷⁹

3. The Scope of PWSA’s Lead Service Line Replacement Program Should Not Be Expanded to Cover All Non-Residential Customers

PWSA urges the Commission to deny OSBA’s recommendation that the Commission modify PWSA’s LSLR Program to include non-residential customers.⁸⁰ PWSA addresses in its Reply Exception No. 3 why its replacement program generally excludes non-residential customers and why that decision should not be disrupted by the Commission.

OSBA submits that if the Commission approves PWSA’s income-based reimbursement program for residential customers that the LSLR Program should be expanded so that non-

⁷⁶ 66 Pa. C.S. § 1304; OCA Exceptions at 6, 12, 19.

⁷⁷ PWSA M.B. at 84.

⁷⁸ PWSA M.B. at 84.

⁷⁹ PWSA M.B. at 84.

⁸⁰ OSBA Exceptions at 6.

residential customers receive at least a \$1,000 stipend if they elect to replace their own lead service line.⁸¹ As described in PWSA's Reply Exception No. 3, PWSA has the discretion to exclude nonresidential customers from its LSLR Program and the component of that program that reimburses customers that elect to replace their own lead service lines. PWSA's decision to dedicate its limited financial resources on replacing residential lead service lines at this time reflects the distinctions between residential and nonresidential service lines and the public health hazard of "partial replacements" that may impact residential customers but are not a concern for nonresidential customers (because there is not a public and private side of a nonresidential service line – the nonresidential service line is wholly owned by the commercial or industrial customer).⁸² It is not inherently unfair, as OSBA protests.⁸³ As the Commission has frequently recognized differences in treatment between residential and nonresidential customers, PWSA encourages the Commission to adopt the ALJs' recommendation that the Commission not modify PWSA's LSLR Program (including its income-based reimbursement program).

For the reasons set forth above, PWSA urges the Commission to not interfere or modify PWSA's LSLR Program, including its income-based reimbursement program and the scope of customers eligible to participate in the program. PWSA's current policies are comprehensive, fair and reasonable in light of the resources currently available.

⁸¹ OSBA Exceptions at 7.

⁸² PWSA R.B. at 37; PWSA M.B. at 82.

⁸³ OSBA Exceptions at 7.

E. Reply Exception No. 5: The ALJs' Findings of Fact in the RD Should Not be Revised as Requested by Pittsburgh UNITED

UNITED contends in its Exception No. 3 that the RD erred in making several findings of fact that UNITED claims are inaccurate or incomplete.⁸⁴ In proposing that the Commission include additional or revised findings of fact, UNITED simply summarized its own evidence and arguments and ignored the evidence presented by PWSA and credited by the ALJs. It is implicit that in electing to include certain Findings of Fact (“FOF”) proposed by PWSA, that the ALJs rejected UNITED’s proposed FOF on those issues.

UNITED challenged as incomplete FOF Number 38 which provides that “PWSA anticipates that orthophosphate will very shortly reduce levels in residential tap water to well below PADEP action levels.”⁸⁵ PWSA submits that FOF Number 38 accurately and completely captures PWSA’s expectation regarding orthophosphate as reflected in the unrebutted testimony of PWSA witness Weimar⁸⁶ and recommends that the Commission reject UNITED’s request.

UNITED presented similar challenges to FOF Number 50 and Number 52 that are set forth below:⁸⁷

FOF Number 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”⁸⁸

FOF Number 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

⁸⁴ UNITED Exceptions at 31.

⁸⁵ UNITED Exceptions at 31; RD at 14.

⁸⁶ PWSA St. C-1RJ (Weimar) at 17-18; PWSA St. C-1R-Supp (Weimar) at 7; PWSA St. C-1SD (Weimar) at 22-23; PWSA St. C-1R (Weimar) at 2-3, 37-38; PWSA St. C-1 (Weimar) at 48-49.

⁸⁷ UNITED Exceptions at 32-33.

⁸⁸ RD at 16.

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).”⁸⁹

UNITED’s challenges to FOF Numbers 50 and 52 take the FOF out of context. UNITED claimed that FOF 50 is misleading as PWSA’s LSLR Program does not address sources of residential lead exposure such as internal plumbing fixtures, lead paint, etc.⁹⁰ Similarly, UNITED complained that FOF 52 is inaccurate as PWSA’s plan does not completely eliminate lead in its water system as it does not address galvanized interior plumbing, lead solder, and lead-bearing internal plumbing fixtures that are other potential sources of drinking water contamination.⁹¹ UNITED’s challenges to FOF 50 and 52 are unfounded as PWSA does not own any household or internal plumbing within the homes or buildings of PWSA’s customers.⁹² First, those other potential sources of drinking water contamination such as customer-owned interior plumbing fixtures are not part of PWSA’s water system so UNITED’s argument must fail.⁹³ Second, remediation of those sources of residential lead exposure are outside the Commission’s jurisdiction and the ambit of this compliance plan proceeding. Consequently, PWSA submits that UNITED’s requested revision or replacement of FOF 50 and 52 should be denied.

UNITED jumped at the opportunity to rehash its arguments regarding PWSA’s 2019 LSLR Program in its criticism of FOF 51.⁹⁴ FOF 51 states that “PWSA’s July 2019 Policy was

⁸⁹ RD at 17 (emphasis added).

⁹⁰ UNITED Exceptions at 32; RD at 16.

⁹¹ UNITED Exceptions at 33.

⁹² PWSA M.B. at 51, n. 205.

⁹³ UNITED appears to not understand that the Commission does not have jurisdiction over private plumbing and this should compel the PUC to reject its claims.

⁹⁴ UNITED Exceptions at 32; RD at 17.

formulated to address all known residential lead service lines in PWSA's system."⁹⁵ In its criticism of FOF 51, UNITED contended that PWSA's 2019 LSLR Program will not result in the replacement of all known residential service lines.⁹⁶ PWSA agrees that the policy will not result in replacement of all known residential service lines as a residential property owner may simply refuse to have their private line replaced or it may be operationally infeasible to replace a line.⁹⁷ However, that reality does not negate that the policy was formulated to address all known residential lead service lines (as properly reflected in FOF 51).⁹⁸ If the Commission is inclined to modify FOF 51, which PWSA does not believe is necessary, PWSA suggests that FOF 51 be revised to read as follows: "PWSA's July 2019 Policy was formulated to address all known residential lead service lines in PWSA's system that a residential property owner consents to having replaced and that is technically feasible to replace."⁹⁹

PWSA submits that the ALJs properly crafted FOF Number 56,¹⁰⁰ which summarizes PWSA's analysis of the reimbursement or stipend that would be provided to demographics in its service territory pursuant to its income-based reimbursement program for customers that elect to replace their own lead service line replacements.¹⁰¹ Another attack on PWSA's income-based reimbursement program via UNITED's challenge to FOF 57 should be disregarded. Contrary to UNITED's assertion, the ALJs' finding that "PWSA's income-based reimbursement plan is similar to the private service replacement programs implemented by other utilities," is supported

⁹⁵ FOF 51 (emphasis added).

⁹⁶ UNITED Exceptions at 32.

⁹⁷ PWSA R.B. at 33; PWSA M.B. at 58.

⁹⁸ PWSA St. C.-1RJ (Weimar) at 4.

⁹⁹ FOF 51 (emphasis added).

¹⁰⁰ RD at 17-18.

¹⁰¹ See PWSA M.B. at 63.

by record evidence.¹⁰² As set forth in PWSA Witness Robert Weimar's rejoinder testimony, PWSA's income-based reimbursement program is similar to the customer-owned lead service line replacement programs of the York Water Company and Pennsylvania-American Water Company as each company pays at least a portion of the customer-owned lead service line replacements. While each company utilizes a different approach for determining the amount that it will pay towards the replacement of a customer-owned lead service line, PWSA's program is not inconsistent with the varying approaches of other companies. Each of the aforementioned companies has no legal obligation to fund the replacement of those customer-owned lines and other ratepayers ultimately pay for replacements that are financed by the company.¹⁰³

UNITED's unfair criticism of PWSA's income-based reimbursement program also extends to FOF 58.¹⁰⁴ FOF 58 accurately reflects that "PWSA is willing to modify [the income-based reimbursement] program so that customers need not come up with the full cost of the replacement and then be reimbursed."¹⁰⁵ PWSA witness Weimar indicated in his rejoinder testimony that PWSA is exploring options so that it could pay its share of replacement costs directly to the contractors performing replacements so that the customers need not come up with the full cost of replacement and then be reimbursed.¹⁰⁶ UNITED's summary of its own arguments and criticism of PWSA's income-based reimbursement program in response to FOF Number 58 should be disregarded.¹⁰⁷

¹⁰² See PWSA M.B. at 72; PWSA St. No. C-1RJ (Weimar) at 7-9.

¹⁰³ PWSA St. No. C-1RJ (Weimar) at 7-9.

¹⁰⁴ UNITED Exceptions at 35.

¹⁰⁵ RD at 18; PWSA M.B. at 73-74; PWSA St. C-1RJ (Weimar) at 11.

¹⁰⁶ PWSA St. C-1RJ (Weimar) at 11.

¹⁰⁷ RD at 33-35.

In addition to requesting that the various FOF mentioned above be revised or vacated, UNITED also suggests a handful of FOF pulled from its Main Brief to the ALJs that it asks the Commission to consider.¹⁰⁸ UNITED's proposed FOF (which are supported by UNITED's arguments in this proceeding) should not be added to the FOF properly prepared by the ALJs. The ALJs appropriately credited PWSA's evidence on the matters at hand.

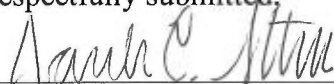
In sum, PWSA encourages the Commission to deny UNITED's Exception No. 3 and its claim that the RD erred in making the above-referenced findings of fact. UNITED's challenges to the ALJs' various findings of fact are a thinly veiled attempt to reiterate its prior criticisms of PWSA's LSLR Program and its income-based reimbursement program for customers that elect to replace their own private-side lead service line. Consequently, PWSA recommends that the Commission deny UNITED's proposal: (1) that it revise or vacate FOF 38, 50, 51, 52, 56, 57, and 58; and (2) that the Commission include additional statements in the FOF that simply summarize UNITED's arguments and ignore the evidence credited by the ALJs.

¹⁰⁸ UNITED Exceptions at 35-36.

III. CONCLUSION

For the reasons set forth above, PWSA respectfully requests that the Commission deny the exceptions of the other parties as explained herein, and issue a decision consistent with PWSA's exceptions to the Recommended Decision.

Respectfully submitted,



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