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May 2, 2022

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Supplemental Statement of the Pittsburgh Water and Sewer Authority ("PWSA") in Support of the Joint Petition for Settlement Regarding PWSA's April 9, 2021 Stage 2 Compliance Plan: Chapters 14 & 56, DSLPA and Collections in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

A handwritten signature in blue ink that reads "Deanne M. O'Dell".

Deanne M. O'Dell

Enclosure

cc: Hon. Eranda Vero w/enc. (via email only)
Hon. Gail M. Chiodo w/enc. (via email only)
Certificate of Service (via email only)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PWSA's Supplemental Statement in Support of Joint Petition for Settlement Regarding PWSA's April 9, 2021 State 2 Compliance Plan 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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Deanne M. O'Dell, Esq.

Dated: May 2, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the Public :
Utility Code Regarding Pittsburgh Water : Docket Nos. M-2018-2640802 (Water)
and Sewer Authority – Stage 2 (Customer : M-2018-2640803 (Wastewater)
Service and Collections) :

**SUPPLEMENTAL
STATEMENT OF THE PITTSBURGH WATER AND SEWER AUTHORITY
IN SUPPORT OF JOINT PETITION FOR SETTLEMENT
REGARDING PWSA’S APRIL 9, 2021 STAGE 2 COMPLIANCE PLAN: CHAPTERS 14 & 56,
DSLPA AND COLLECTIONS**

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I. INTRODUCTION

The Pittsburgh Water and Sewer Authority (“PWSA” or the “Authority”) submits this Supplemental Statement in Support of the Joint Petition for Settlement Regarding PWSA’s April 9, 2021 Stage 2 Compliance Plan: Chapters 14 & 56, DSLPA and Collections (“Settlement” or “Joint Petition”) entered into by PWSA, the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), Pittsburgh United (“Pittsburgh United”), and the City of Pittsburgh (“City”) (collectively, “Joint Petitioners”)¹ and filed on March 14, 2022. PWSA’s initial Statement in Support is included as Exhibit B to the Joint Petition and is incorporated herein by reference.

The purpose of this Supplemental Statement in Support is to further address why the “default” property owner notification process set forth in Section III.B.1.b.i of the Joint Settlement is just and reasonable and should be adopted. After further consideration of the concerns expressed by Administrative Law Judges Eranda Vero and Gail M. Chiodo (“ALJs”) during an on-the-record Telephonic Settlement Conference held on April 5, 2022, PWSA has determined that additional support for the Settlement may assist the ALJs and, ultimately, the Commission in its evaluation of the Settlement.²

As explained more fully below, the Settlement proposes to continue PWSA’s historical practice of providing a tenant’s bill and other notices related to the property to the property owner (as well as the tenant) but with additional enhancements to better educate tenants about the information provided to the property owner and to offer tenants alternatives in lieu of the

¹ As stated in the Joint Petition the Office of Small Business Advocate (“OSBA”) does not oppose the Settlement.

² In furtherance of this goal, PWSA also filed a Petition to Reopen the Record and Admit Late-filed Exhibits JAQ-39 and JAQ-40 on April 21, 2022. Proposed Exhibits JAQ-39 and JAQ-40 are sample PWSA bills to a tenant participating in PWSA’s Customer Assistance Programs.

“default” process, including a new to-be-developed opt-out option limiting the information that is shared with the property owner. PWSA submits that the enhancements set forth in the Settlement represent a reasonable compromise of the competing views raised by the Parties, and reasonably address concerns raised about safeguarding the privacy of customer information while preserving PWSA’s ability to pursue a lien for collection of unpaid charges. PWSA also submits that the proposed process does not violate the Public Utility Code, Commission regulations or other Commission requirements. For these reasons, PWSA respectfully submits that this provision of the Joint Settlement is in the public interest and requests that it –as well as the entire Settlement – be adopted without modification.

II. DESCRIPTION OF THE RELEVANT SETTLEMENT TERMS

Pursuant to Section III.B.1.b.i of the Joint Settlement, the property owner will receive copies of the bills and notices associated with the property he or she owns, including high consumption and termination notices. While issuing a bill regarding a tenant to both the tenant and the landlord³ is consistent with PWSA’s long-standing historical practice, the Settlement requires PWSA to implement additional enhancements including: (1) better informing the Tenant Applicant about the sharing of the bill; and, (2) providing a method for the Tenant Applicant to acknowledge that he or she has been informed about the information which may be provided to the property owner through the sharing of the bill.⁴ For tenants wishing not to permit the sharing of the bill with the property owner, Sections III.B.1.b.ii through iv of the Settlement set forth a

³ In Direct Testimony, PWSA Witness Julie A. Quigley clarified that PWSA is not billing two separate persons for the same service. PWSA St. No. 1 at 22-23. When a tenant is added to the account the bill is updated to state that “This bill was issued to both the tenant and property owner.” See PWSA Exhibit JAQ-31. PWSA’s processes maintain ultimate payment responsibility with the property owner. PWSA St. No. 1 at 23 and PWSA St. No. 1-RJ at 4-5. Any payments received are credited to the account. If payments are not received, PWSA will proceed with its process to pursue collections via a lien. See PWSA. St. No. 1-R at 9-10 and PWSA Exh. JAQ-2 regarding PWSA’s lien process.

⁴ Settlement at Section III.B.1.b.i.(a) and (b).

new to-be developed “opt-out” option permitting Tenant Applicants and Tenant Customers to alternatively elect to have PWSA send new to-be-developed notices to the property owner in lieu of a copy of the bill.⁵ For Tenant Applicants who decline either option, Section III.B.1.b.v. and Section III.B.3 of the Settlement make clear that the tenant will remain eligible for a continuance of service, afforded all rights provided by the Discontinuance of Service to Leased Premises Act,⁶ and be eligible for all applicable legal protections to cease a service termination in lieu of payment. Importantly, Section III.B.4 addresses domestic violence victims and prohibits PWSA from sharing a copy of the bill or any other account notices with the property owner or landlord in those instances.

Taken together, these settlement provisions reasonably address concerns raised by the parties about PWSA’s historical practices. The Settlement proposes reasonable enhancements to better inform and empower tenants while also preserving the ability of PWSA to pursue a lien against the property for unpaid charges. These provisions of the Settlement were crafted after careful consideration of customer concerns regarding privacy and the impact on all ratepayers of both increased uncollectible expense costs and increased system costs to develop new processes. The result, as explained further below, is just and reasonable and does not violate the Public Utility Code, Commission regulations or other Commission requirements. Accordingly, the term should be adopted as in the public interest.

⁵ Because the opt-out process is new and PWSA is in the process of implementing a new SAP billing system which did not include the opt-out process in the initial scope of work, PWSA determined that an additional six months after successful implementation of the new SAP billing system to make the new opt-out process available to tenants was needed. PWSA Witness Julie A. Quigley testified about the costs and operational requirements that would be necessary with system changes. *See* PWSA St. No. 1-R at 20 and PWSA St. No. 1-RJ at 3-4.

⁶ 66 Pa.C.S. §§ 1521-1533.

III. LEGAL FRAMEWORK

A. Requirements of this Proceeding and PWSA's Unique Status as a Municipal Authority

The purpose of this proceeding is for the Commission to “oversee and approve the PWSA’s plans and processes for coming into compliance with the Code, Commission Regulations and Orders” as required by 66 Pa. C.S. § 3204(b).⁷ PWSA is a municipal authority, a body politic and corporate, organized and existing under the Pennsylvania Municipality Authorities Act, 53 Pa. C.S. §§ 5601, *et seq.* (“MAA”). As a municipal authority, PWSA is an independent agency of the Commonwealth⁸ and possesses only the powers that the General Assembly has granted it by its enabling legislation.⁹

On December 21, 2017, the Public Utility Code was amended to add new language directing that the Public Utility Code shall apply to PWSA in the “same manner as a public utility.”¹⁰ This plain language in Section 3202(a) does not define PWSA as a “public utility” nor does it expressly abrogate or limit any of the rights or powers of PWSA as a municipal authority. Thus, while the Commission does not have jurisdiction to enforce or interpret the MAA, PWSA continues to be required to comply with the MAA.¹¹ PWSA’s status as a municipal authority subject to the jurisdiction of the Commission is unique because the Commission does not

⁷ *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1*, Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater), Opinion and Order entered March 26, 2020 at 74. (“*March 2020 Stage 1 Order*”).

⁸ *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”); *Lehigh-Northampton Airport Auth. v. Lehigh County Bd. of Assessment Appeals*, 889 A.2d 1168, 1176 (Pa. 2005) (the “fundamental nature” of a municipal authority is that of “a corporate agency of the state, and not a child of a municipality”).

⁹ *Beaver Falls Mun. Auth. v. Mun. Auth. of the Borough of Conway*, 689 A.2d 379, 383 (Pa. Cmwlth. 1997)(“[t]he power and authority of a municipal authority is limited to that granted it by its enabling legislation.”).

¹⁰ 66 Pa.C.S. § 3202(a)(1).

¹¹ *Naylor v. Township of Hellam*, 773 A.2d 770, 773-774 (Pa. 2001) (“munic. 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).”).

regulate municipal authorities, and the other Commission regulated entity with the power to pursue a lien is a municipality not governed by the MAA.

Regarding municipal authorities, the courts of common pleas have exclusive jurisdiction over questions concerning their utility services within and beyond the corporate limits of the municipality which created the authority.¹² With the passage of Chapter 32, the legislature created a unique exception for PWSA, a municipal authority, subjecting its water, wastewater conveyance, and stormwater operations to regulation by the Commission.

The only other fully Commission regulated entity with the power to pursue a lien¹³ is Philadelphia Gas Works (“PGW”) but PGW is not a municipal authority subject to the MAA. Rather, PGW is a municipality,¹⁴ i.e., a collection of assets that constitute the City of Philadelphia’s natural gas distribution operations.¹⁵ Therefore, provisions of the MAA regarding the necessary prerequisites for a municipal authority to pursue collection through the lien process are not applicable to PGW.

¹² *Rankin v. Chester Mun. Auth.*, 165 Pa. Super. 438, 444-45, 68 A.2d 458, 461 (1949). In *Graver v. Pa. Pub. Util. Com.*, 79 Pa. Commw. 528, 469 A.2d 1154 (1984), it was held Rankin remains good law and that Section 4B(h) of the Municipal Authorities Act of 1945 remains in force and modifies the Public Utility Code in the same manner as it modified the Public Utility Law.

¹³ As discussed in Section III.B, the power to lien is available only to municipalities and municipal authorities and not investor-owned utilities.

¹⁴ With the exception of PGW, which became regulated by the Commission pursuant to an amendment to the Public Utility Code, the Commission’s jurisdiction over rates and service of municipalities is limited to those customers residing outside the corporate boundaries of a municipality. 66 Pa. C.S. § 1301(a) (“Only public utility service being furnished or rendered by a municipal corporation, or by the operating agencies of any municipal corporation, beyond its corporate limits, shall be subject to regulation and control by the commission.”).

¹⁵ 66 Pa.C.S. § 102 Definition of “City natural gas distribution operation.” The City of Philadelphia was incorporated in 1789. See 53 P.S. § 16252. The powers of the City of Philadelphia and the duties of its officers are established by the Act of April 21, 1949, P.L. 665, 53 P.S. § 13101 et seq. (First Class City Home Rule Act) and the Act of June 25, 1919, P.L. 581, 53 P.S. § 12101 et seq. (First Class Cities Act).

B. Requirements to Exercise Power to Lien and PWSA's Processes

The power of municipalities (like PGW) and municipal authorities (like PWSA) to pursue liens to collect on unpaid utility charges is set forth in the Municipal Claims and Tax Liens law ("MCTL").¹⁶ The MCTL definition of a "municipal claim" includes water and sewer service supplied by a municipality (which definition includes municipal authorities)¹⁷ and establishes the process to file a lien on the property to pursue collection of unpaid municipal claims.¹⁸ The MCTL also imposes liability on a property owner for failure of owner's tenant to satisfy payment obligation.¹⁹ The MAA imposes an additional requirement on municipal authorities, like PWSA, to notify the tenant and the property owner within 30 days after the first bill becomes overdue to preserve the ability to impose and enforce the property owner's duty to pay for unpaid utility services rendered to the tenant.²⁰

To preserve its ability to pursue collection on a lien for unpaid utility charges against a property owner, PWSA has historically issued the bill of the tenant to both the tenant and the property owner. By issuing a tenant bill to both the property owner and the tenant, PWSA has ensured that the property owner is advised of the charges incurred at his or her property and also whether or not the charges are being paid. As Ms. Quigley explained during the Telephonic Settlement Conference, PWSA's billed charges are due 20 days after the date of the bill.²¹

¹⁶ 53 P.S. §7101, *et. seq.*

¹⁷ 53 P.S. §7101.

¹⁸ 52 P.S. §§ 7107, 7108.

¹⁹ 53 P.S. § 7251.

²⁰ 53 Pa. C.S. § 5607(d)(10) and (11). In the absence of a legal obligation for municipalities (like PGW) to inform landlords about overdue tenant charges, municipalities have responded in various ways to keep landlords aware of the status of a tenant's municipal accounts. For example, the Boroughs of Perkasié and Quakertown (both in Bucks County, Pennsylvania) will mail landlords duplicates of all monthly bills and any shut-off notices for a charge. See <https://perkasiéborough.org/?s=landlords> and <https://www.quakertown.org/government/finance/utility-billing/landlords>.

²¹ Tr. at 152.

Pursuant to PWSA's Collections Life Cycle, 30 days after the date of the bill, a second bill is generated with a past due notice since, at that point in time, the charges on the prior bill are 10 days past due.²² By providing the property owner with the copy of the bill, he or she is advised of the charges that are due and is informed about any past due charges 10 days after they become past due. As such, PWSA's process of issuing a bill to the property owner and the tenant satisfies the MAA requirements to notify the property owner within 30 days after the first bill becomes overdue²³ so as to preserve its ability to impose and enforce the property owner's duty to pay for the unpaid charges. As Ms. Quigley testified, "the ability of PWSA to file a lien against a property is a strong incentive for property owners to pay outstanding charges" and "is vitally important for PWSA's collections activities."²⁴ Ms. Quigley also testified that, when PWSA has been slow to collect overdue charges, the likelihood of collecting diminishes over time.²⁵

IV. THE SETTLEMENT IS CONSISTENT WITH THE PUBLIC UTILITY CODE, COMMISSION REGULATIONS AND OTHER COMMISSION REQUIREMENTS REQUIRING UTILITIES TO SAFEGUARD PRIVATE CUSTOMER INFORMATION

During the Telephonic Settlement Conference, the ALJs sought additional support for the proposal of the Settlement to continue to send the property owner a copy of the tenant's bill on a "default" basis.²⁶ ALJ Vero specifically questioned how continuing to "turn over the bills" to a "third party" satisfies PWSA's duty under the Public Utility Code and Chapter 56 to "protect privacy and confidentiality."²⁷ As explained further below, PWSA's default process of

²² See PWSA Exh. JAQ-1 at CP Stage 2 App. D-5.

²³ 53 Pa. C.S. § 5607(d)(1)

²⁴ PWSA St. No. 1-R at 12-13.

²⁵ Tr. at 154.

²⁶ Tr. at 161.

²⁷ Tr. at 161-162/

providing a copy of the bill to the property owner does not expose private confidential information and, even if there is disagreement about this view, the to-be-adopted new processes are consistent with the Commission's regulations which do permit private confidential information to be shared so long as appropriate safeguards are in place.

A. Tenant Bills Do Not Expose Private Confidential Information to a Property Owner

A threshold issue is whether providing a copy of the tenant's bill to the landlord exposes private confidential information in violation of a public utility's duty to protect such information from disclosure. In the narrow context of a municipal authority providing a copy of a tenant's bill to the property owner who remains ultimately responsible for any unpaid charges, PWSA submits that none of the information included on its bills improperly exposes private customer information. The information included on the bills, and the reasons why such information is not improperly disclosed to the landlord, are discussed more fully in the below sections.

1. Social Security Number, Financial Information, and Account Number

As Ms. Quigley testified, PWSA does not collect social security numbers and has stringent processes in place to protect sensitive financial information to ensure that neither the tenant nor the property owner has access to each other's banking information.²⁸ As such PWSA's bills do not include social security numbers or any other type of sensitive financial information.²⁹

²⁸ Pwsa St. No. 1 at 23-22

²⁹ PWSA Exhibits JAQ-31, 39 and 40 are samples of PWSA's bills to tenants.

PWSA's bills do include an account number. However, the account number on the tenant's bill is associated only with the tenant's account.³⁰ Providing the account number to the property owner does not grant the property owner access to any of the tenant's information.

2. Name and Property Address

PWSA's bills include the tenant's name and the property address where service has been rendered. This information, however, will be known by the property owner as a part of the leasing arrangement with the tenant.³¹ Importantly, because of the Authority's right to lien the property, the property owner, who is ultimately responsible for any unpaid charges at the property, is not a "third party."³² Thus, the name and address included on the bill is already known by the property owner. Therefore, the disclosure of this information to the property owner (who already has a relationship with the tenant through the leasing arrangement) does not reveal any previously unknown personally identifiable information.

3. Charges, Arrearages and Impact of Participation in PWSA's Customer Assistance Programs

PWSA's bills also include information about the charges assessed, any credits, payments and/or outstanding amounts due. All of this information is important to fully disclose to the property owner because any amounts that remain outstanding may be subject to PWSA's lien process for which the property owner would bear ultimate liability. As explained previously, the MAA requires PWSA to notify the property owner within 30 days after the first bill becomes overdue to preserve the ability to impose and enforce the property owner's duty to pay for unpaid utility services rendered to the tenant.³³ This purpose is accomplished by providing a copy of the

³⁰ PWSA St. No. 1-R at 21.

³¹ PWSA St. No. 1-R at 21-22.

³² PWSA St. No. 1-RJ at 5.

³³ 52 Pa. C.S. § 5607(d)(10) and (11).

tenant's bill to the property owner. Since PWSA is authorized by law to share this information, and the information is being shared only with the owner of the property who will ultimately be liable for any unpaid charges, PWSA submits that the sharing of a tenant's bill with the property owner does not expose private confidential information.

Additionally, PWSA is a municipal authority and subject to requests made pursuant to the Right-to-Know Law ("RTKL").³⁴ Several cases have held that municipal entities do not violate either the Pennsylvania Fair Credit Extension Uniformity Act ("FCEUA")³⁵ or the federal Fair Debt Collection Practices Act ("FDCPA")³⁶ by releasing delinquent account information to the public if the release is authorized by the Right to Know Law.³⁷ Such cases hold that (a)

³⁴ 65 P.S. §§ 67.101 to 67.3104.

³⁵ 73 P.S. §§ 2270.1, *et seq.*

³⁶ 15 U.S.C. §§ 1692, *et seq.*

³⁷ *See, e.g., Anderson v. City of Sharon Sanitary Authority*, Office of Open Records Docket No. AP 2009-0502, Final Determination issued August 21, 2009, affirmed, 2010 Pa. Dist. & Cnty. Dec. LEXIS 30 (Ct. Com. Pl. Mercer Co., Jan. 26, 2010) (directing the release of delinquent sewer account information); *In The Matter Of: Signature Information Solutions v. Hempfield Township Municipal Authority*, Office of Open Records Docket No.: AP 2010-0829, Final Determination issued October 5, 2010) (directing the release of delinquent sewer account information); *In The Matter Of Nora Deluca v. Conemaugh Township Water And Sewer Authority*, Office of Open Records Docket No. AP 2010-0313, Final Determination issued May 12, 2010 (directing the release of delinquent sewer account information); *In The Matter of Forest Hills Volunteer Fire Company v. Borough of Forest Hills*, Office of Open Records Docket No. AP 2013-0839, Final Determination issued June 10, 2013, affirmed, Cumberland County Court of Common Pleas Docket No. 2013-06395, Order issued May 16, 2014) (directing the release of list of residents that have not paid the borough's fire services fee); *In The Matter Of Cate Barron and The Patriot-News/Pennlive v. Borough of Lemoyne*, Office of Open Records Docket No. AP 2013-1738, Final Determination issued October 3, 2013 (directing the release of delinquent sewer account information); *In The Matter Of Julianne Mattera and The Patriot-News/Pennlive v. Lower Paxton Township*, Office of Open Records Docket No. AP 2014-0550, Final Determination issued May 1, 2014 (directing the release of delinquent sewer account information); *In The Matter Of Julianne Mattera and The Patriot-News v. Susquehanna Township Authority*, Office of Open Records Docket No. AP 2014-0720, Final Determination issued May 20, 2014 (directing the release of delinquent sewer account information); *In The Matter Of Rance Baxter v. Genesee Township*, Office of Open Records Docket No. AP 2014-1242, Final Determination issued September 11, 2014 (directing release of list of taxpayers owing an assessment fee); *In The Matter Of Paul Van Osdol and WTAE TV v. Pittsburgh Water And Sewer Authority*, Office of Open Records Docket No. AP 2014-1524, Final Determination issued December 1, 2014 (directing the release of delinquent water and sewer account information); *In The Matter Of John Dobrota v. Chestnut Ridge Area Municipal Authority*, Office of Open Records Docket No: AP 2015-0686, Final Determination issued June 26, 2015 (directing the release of delinquent sewer account information).

delinquent account information is a financial record that must be released to the public when requested under the RTKL; and (b) such releases are not being made “in connection with the collection of a debt.” In these instances, the fact that the information is being requested under the RTKL has been found to mean that the request is *per se* non-debt collection related. The requirement for PWSA to release account information to the public upon a RTKL request (which is not debt collection related) further supports the view that sharing the tenant’s bill with the property owner in the context of the proposal here is legally supportable.

PWSA acknowledges concerns raised during the Telephonic Settlement Conference about whether sharing the tenant’s bill “is an invasion of privacy” by letting the property owner know whether the tenant is eligible or is participating in the CAP program, meaning that they are low income.³⁸ To further evaluate this concern, PWSA has sought the admission of Exhibits JAQ-30 and JAQ-40 into the record, which are sample bills of tenants participating in PWSA’s CAP. For tenants participating in CAP, the charges on the bill are adjusted to reflect the credits associated with CAP participation.³⁹ So, for example, a CAP participant in PWSA’s Bill Discount Program is not assessed any minimum charges and receives a discount on the Stormwater charge. This participation is reflected on PWSA Exhibit JAQ-40, page 2 by not including under “Current Charges” any water or wastewater minimum⁴⁰ charges and noting the Stormwater fee discount. Thus, the effect of a tenant’s participation in CAP is portrayed on the bill in terms of the impact on the overall charges that are being assessed. The impact of the tenant’s CAP participation on the charges that are assessed is relevant information for the property owner so that he or she knows the potential extent of his or her liability. Importantly,

³⁸ TR. at 171.

³⁹ See PWSA Exh. JAQ-39 and 40 and Verified Statement of Julie A. Quigley at ¶¶5-8.

⁴⁰ See PWSA Exh. JAQ-31 which is a sample bill of a customer not eligible for the discounts.

nothing on the bill provides any specific information about the eligibility for or participation in the program generally or about the tenant's specific financial circumstances.

Moreover, the Commission has not held that the mere fact of participation of a customer in a utility's CAP is private confidential information. In fact, the Commission has permitted utilities to share income and household information qualifying a customer for one utility's CAP with another utility's CAP so long as appropriate disclosures are in place.⁴¹ Sharing a copy of a bill of a tenant participating in PWSA's CAP without exposing anything beyond the impact of such participation on the charges does not result in the sharing of any financial or personal information of the tenant.

Finally, to the extent the tenant's participation in CAP has negative consequences for the tenant regarding his or her relationship with the landlord, such matters are not within the Commission's jurisdiction. As the Commission has recently stated "tenants are empowered to take legal actions against landlords who jeopardize their water service and should exercise their rights to the extent they are able" but the Commission needs to "be careful not to overstep [its] jurisdiction."⁴² In this context, PWSA is providing information to the property owner about the charges that are being incurred and paid consistent with its legal obligation to preserve its ability to lien. As such, the bill does not expose private customer information.

4. Consumption

PWSA's current rate structure includes a Minimum Charge and a Consumption Charge. For residential customers with 5/8" water meters, the Minimum Charge is assessed for the first

⁴¹ *Columbia Gas of Pennsylvania Inc Universal Service and Energy Conservation Plan for 2015-201*, Docket No. M-2014-2424462, Final Order entered July 8, 2015 at 32.

⁴² *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1*, Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater), Opinion and Order entered February 4, 2021 at 29.

1,000 gallons of usage. The Consumption Charge applies for each 1,000 gallons above the first 1,000 gallons assessed pursuant to the Minimum Charge.⁴³ Because of this rate structure, PWSA's bill displays average monthly usage in 1,000 gallons increments.⁴⁴ For example, a customer may use 1,999 gallons of water in a particular month, yet only 1,000 gallons will be displayed on their bill. When the customer's usage surpasses the 2,000 gallons mark, that additional 1,000 gallons will be included in a subsequent monthly bill. As such, PWSA's billing does not provide granular or real-time data about a customer's usage. This is in contrast to the real-time average daily usage information that is provided on an electric utility bill.⁴⁵ Thus, the consumption information portrayed on PWSA's bills does not expose what might be considered private confidential data about the tenant's water usage. Moreover, the Commission has not determined that water consumption data is private confidential information.

The consumption data on the bill, however, does provide information that is relevant to the property owner because higher than expected usage can signal an issue with leaking internal plumbing or broken plumbing devices.⁴⁶ Given the property owner's ultimate responsibility for unpaid charges, alerting the property owner to higher than average water consumption as soon as it is recorded and provided on the bill will enable him or her to diagnose and repair broken plumbing issues. Ensuring that the property owner is notified as soon as possible and can take timely action to fix such issues can prevent damage to the structure (or neighboring structures)

⁴³ PWSA Tariff Water – Pa. P.U.C. No. 1, Part I, Section A, Page No. .

⁴⁴ PWSA Exh. JAQ-31.

⁴⁵ For example, the bill for PPL Electric Utilities shows the average per day kWh usage. *See* <https://www.pplelectric.com/-/media/PPLElectric/At-Your-Service/Docs/General-Supplier-Reference-Information/Two-Bill-Example.pdf>

⁴⁶ PWSA St. No. 1-R at 20.

and avoid costly waste of water issues, which other ratepayers would potentially bear in the form of higher rates for uncollected charges.⁴⁷

B. The Proposed Settlement Satisfies All Commission Requirements Regarding Safeguarding Private Customer Information

As explained more fully in the previous section, PWSA submits that its practice of providing a copy of a tenant's bill to a property owner does not disclose private confidential information. However, even if the ALJs and/or the Commission ultimately disagree, PWSA submits that the proposed enhancements to the "default" process of issuing a bill to the property owner as set forth in Section III.B.1.b.i of the Joint Settlement satisfies current Commission requirements that utilities are required to take prior to sharing customer information.

Below are the Commission's Regulations regarding the duty of public utilities to safeguard customer information:

- 52 Pa. Code § 56.11(b)(8) addresses electronic billing programs and states that: "The public utility shall employ all reasonable measures to protect customer information from **unauthorized disclosure** and to prevent access to customer account records by persons who are not properly authorized to have access." (emphasis added).
- 52 Pa Code § 56.32(c) requires that public utilities, in the context of compiling proof of identity of an applicant for utility service, "take all appropriate actions needed to ensure the privacy and confidentiality of **identification information** provided by their applicants and customers." (emphasis added).
- 52 Pa. Code §§ 54.8 and 62.78 prohibit electric distribution companies, electric generation suppliers and natural gas distribution companies from releasing private customer information to a **third party unless**: "the customer has been notified of this intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information." (emphasis added)

⁴⁷ PWSA St. No. 1-R at 22. If PWSA has advised a customer that he or she has a leak on their section of the service line that must be repaired and the customer takes no action, then PWSA concludes that the customer is willfully or negligently wasting water and will pursue its "Waste of Water" notice process which may result in service termination. See PWSA St. No. 1 at 49. This, however, is different from an initial notice of higher than average consumption which would be revealed on the bill.

While recognizing that none of these regulations are directly relevant to a municipal authority providing water bills of a tenant to a property owner to preserve the ability to lien, PWSA submits that the safeguards embedded in these regulations are satisfied through the proposed enhancements to PWSA's historical process of sharing a copy of the tenant's bill with the property owner.

First, legal authorization for PWSA to share a copy of the tenant's bill is provided by the MAA and would also come from the Commission approving this Settlement term whereby the tenant affirmatively acknowledges that he or she has been informed about the sharing of the bill with the property owner. As noted above, all of the information on the tenant's bill is consistent with providing the property owner relevant information about charges for which he or she will ultimately be responsible if they are unpaid. As such, the default process – as modified by the Settlement – will not be an unauthorized sharing of information by PWSA.

Second, in this scenario, the property owner is not a "third party." Rather he or she is, by law, a person who is responsible for the property and any unpaid PWSA charges assessed at the property. PWSA's process is narrowly tailored to provide the bill only to this limited category of persons. Therefore, sharing a copy of the bill with the property owner is not an improper sharing of information by PWSA to a "third party."

Finally, the Settlement empowers tenants regarding the sharing of the bill to give them options that were not available in the past. For example, the Settlement requires PWSA to affirmatively notify the tenant that the bills and notices related to the account will be provided to the property owner.⁴⁸ PWSA will also develop a new method for a tenant to acknowledge that

⁴⁸ Settlement at III.B.1.b.i(a)

he or she has been informed about the sharing of the information with the property owner.⁴⁹ In addition, immediately available to tenants who do not wish to have the bill shared with the property is the option to remain eligible for a continuance of service by receiving all rights provided by the Discontinuance of Service to Leased Premises Act while being eligible for all applicable legal protections to cease a service termination in lieu of payment.⁵⁰ No later than six months after successful implementation of its new SAP billing system (currently on track to go live in August 2022), tenants who do not want to elect either of the prior two choices will be able to select a new to-be-developed opt-out option which will still provide the property owner relevant information but through new notices in lieu of copies of the bills.⁵¹ This “opt-out” provision is another way in which the bill disclosure is “authorized,” this time by the tenant him or herself electing not to opt out of having the property owner receive the bill.

Upon consideration of all the proposed changes in the Settlement and the operational issues involved in implementing so many new processes, PWSA submits that the Settlement’s proposed enhancements to its historical practice of sending the tenant’s bill to the property owner may be approved as in compliance with the Commission regulations even though implementation of the opt-out process may follow later due to operational issues. Therefore, PWSA respectfully requests that the Settlement be adopted without modification.

⁴⁹ Settlement at III.B.1.b.i(b).

⁵⁰ Settlement at Section III.B.1.b.v. and Section III.B.3.

⁵¹ Settlement at Sections III.B.1.b.ii through iv.

V. CONCLUSION

For all the reasons set forth herein, in PWSA's March 14, 2022 initial Statement in Support, and the Joint Petition for Settlement, PWSA respectfully requests that the ALJs recommend that the Commission adopt the Settlement as proposed without modification.

Respectfully submitted,



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