

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2023-3039919 (stormwater)
Office of Small Business Advocate	:	C-2023-3040789
Office of Consumer Advocate	:	C-2023-3040847
Jonathan Bergholz	:	C-2023-3041708
Katherine Shingler	:	C-2023-3041815
	:	
v.	:	
	:	
The Pittsburgh Water and Sewer Authority	:	

Pennsylvania Public Utility Commission	:	R-2023-3039920 (water)
Office of Small Business Advocate	:	C-2023-3040785
Office of Consumer Advocate	:	C-2023-3040845
Lisa Banal	:	C-2023- 3041703
Jonathan Bergholz	:	C-2023- 3041707
Katherine Shingler	:	C-2023- 3041817
Renee Abrams	:	C-2023- 3041818
	:	
v.	:	
	:	
The Pittsburgh Water and Sewer Authority	:	

Pennsylvania Public Utility Commission	:	R-2023-3039921 (wastewater)
Office of Small Business Advocate	:	C-2023-3040780
Office of Consumer Advocate	:	C-2023-3040846
Jonathan Bergholz	:	C-2023- 3041709
Katherine Shingler	:	C-2023- 3041816
	:	
v.	:	
	:	
The Pittsburgh Water and Sewer Authority	:	

Petition of the Pittsburgh Water and Sewer Authority for Authorization to Increase Water and Wastewater DSIC Charge Caps to 7.5% : P-2023-3040734 (water)
: P-2023-3040735 (wastewater)
:
:

Petition of the Pittsburgh Water and Sewer Authority for Authorization to Implement a Customer Assistance Charge : P-2023-3040578
:
:

RECOMMENDED DECISION

Before
Gail M. Chiodo
Administrative Law Judge

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I. INTRODUCTION

This decision recommends that the Pennsylvania Public Utility Commission (“Commission”) approve the “Joint Petition for Settlement of All Issues With All Parties” (“Joint Petition” or “Settlement”), filed on October 30, 2023. However, this decision also recommends that Pittsburgh Water and Sewer Authority (“PWSA” or “the Authority”) be directed to provide certain information with their compliance tariffs—namely, proofs of revenue and supporting calculations for water, wastewater, and stormwater services, consistent with its past rate cases; and certain information regarding any PennVest loans, as more fully explained in this decision.

After an exhaustive and careful review of the Joint Petition; the seven Statements in Support of the Joint Petition submitted by the statutory advocates and active intervenors; the voluminous record evidence consisting of over 5,000 pages of written and oral testimony, exhibits, stipulations, and public input hearing testimony; and the written objections of the consumer complainants, I conclude that the Joint Petition is supported by substantial evidence, is consistent with the Public Utility Code and is in the public interest.

As initially filed, PWSA requested to implement three years of consecutive rate increases by way of a multi-year rate plan (“MYRP”) which would have raised customers’ rates by \$146.1 million over three years. For a typical Residential customer using 3,000 gallons of water per month and charged the base rate for stormwater services, the MYRP would have provided a total increase of 69.1%; it also would have added two surcharges (an Infrastructure Improvement Charge and a Customer Assistance Charge) to support the MYRP, and increased its water and wastewater distribution systems charge (“DSIC”) caps from 5.0% to 7.5%.

In contrast, if approved, the Settlement allows PWSA to increase its annual base rate in February 2024 by \$35,997,325; eliminates further rate increases contemplated in 2025 and 2026; provides a “stay out” provision so that PWSA cannot file another rate increase until January 1, 2025, for rate implementation in 2026, with limited exceptions for extraordinary relief; and provides for PWSA’s agreement to participate in collaborative meetings to find ways to reduce

impervious area and increase stormwater credits. Additionally, the Settlement provides for other enhancements to low income assistance programs, customer service and quality of service.

The effective date of the tariff was voluntarily suspended until February 15, 2024. Therefore, the last reasonable public meeting that the Commission must act is February 1, 2024.

II. HISTORY OF THE PROCEEDING

PWSA's filings and responses thereto

On May 9, 2023, PWSA filed proposed rate increases in its three utilities: water, wastewater, and stormwater. It filed Supplement No. 12 to Tariff Water Pa. P.U.C. No. 1 (“Supplement No. 12”);¹ Supplement No. 11 to Tariff Wastewater Pa. P.U.C. No. 1 (“Supplement No. 11”);² and Supplement No. 3 to Tariff Stormwater Pa. P.U.C. No. 1 (“Supplement No. 3”)³ (collectively “the Rate Filing” or “Tariffs”). The proposed Tariffs sought approval of a multi-year rate plan for proposed consecutive rate increases, effective in 2024, 2025, and 2026. If approved by the Commission, the Authority’s overall rates would have been increased by approximately \$146.1 million, inclusive of a proposed Distribution System Infrastructure Charge (“DSIC”) cap increase. This included increases of \$46.8 million or 33.5% in 2024; \$45.4 million or 17.8% in 2025; and an additional \$53.9 million or 17.9% in 2026.

Also on May 9, 2023, the Authority filed four Petitions--two in the Rate Filing and two that were separately docketed. In the Rate Filing, the Authority filed: (1) a Petition for Waiver of Statutory Definition of Fully Projected Future Test Year (“FPFTY Petition”) and (2) a Petition for Consolidation of Water, Wastewater and Stormwater Rate Proceedings and for Authorization to Use Combined Water, Wastewater and Stormwater Revenue Requirements (“Revenue Consolidation Petition”). The Petitions separately docketed are: (1) a Petition for

¹ Docket No. R-2023-3039920 (water).

² Docket No. R-2023-3039921 (wastewater).

³ Docket No. R-2023-3039919 (stormwater).

Authorization to Implement a Customer Assistance Charge (“CAC Petition”);⁴ and (2) a Petition for Authorization to Increase Water and Wastewater DSIC Charge Caps to 7.5% (“DSIC Petition”).⁵

On May 18, 2023, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance.

On May 19, 2023, the Office of Small Business Advocate (“OSBA”) filed Formal Complaints and Public Statements in the Rate Filing at numbers: C-2023-3040785 (water), C-2023-3040780 (wastewater), and C-2023-3040789 (stormwater).

On May 23, 2023, PWSA filed a Petition to Consolidate its DSIC Petition and CAC Petition with the Rate Filing (“DSIC and CAC Consolidation Petition”).

Also on May 23, 2023, the Office of Consumer Advocate (“OCA”) filed Formal Complaints and Public Statements in the Rate Filing at C-2023-3040845 (water), C-2023-3040846 (wastewater), and C-2023-3040847 (stormwater).

On May 30, 2023, OCA filed: (1) a Letter indicating non-opposition to PWSA’s Revenue Consolidation Petition; (2) a Letter indicating non-opposition to PWSA’s FPPTY Petition; (3) an Answer to PWSA’s DSIC Petition; (4) an Answer to PWSA’s CAC Petition; and (5) a Letter indicating non-opposition to PWSA’s DSIC and CAC Consolidation Petition.

Also on May 30, 2023, I&E filed Answers to PWSA’s Revenue Consolidation Petition, the FPPTY Petition, and the DSIC and CAC Consolidation Petition.

⁴ Docket No. P-2023-3040578.

⁵ Docket Nos. P-2023-3040734 (water) and P-2023-3040735 (wastewater).

On June 12, 2023, the Pittsburgh United's Our Water Table ("Pittsburgh United") filed a Petition to Intervene.

On June 15, 2023, the Commission entered three Suspension Orders suspending each of PWSA's proposed Tariffs by operation of law until February 8, 2024. The Suspension Orders also instituted an investigation to determine the lawfulness, justness, and reasonableness of the proposed and existing rates, rules, and regulations and assigned the Rate Filing to the Office of Administrative Law Judge ("OALJ") for the prompt scheduling of hearings as may be necessary culminating in the issuance of a recommended decision. On this same date, the DSIC and CAC Petitions were assigned to OALJ.

On June 16, 2023, a Telephonic Prehearing Conference Notice was issued in the Rate Filing scheduling a Prehearing Conference for June 29, 2023, and the matter was assigned to the undersigned, as well as all of the related Petitions. On this same date, a Prehearing Conference Order was issued.

On June 26, 2023, a Petition to Intervene was filed by the School District of Pittsburgh ("the School District").

On June 27, 2023, a Petition to Intervene was filed by the City of Pittsburgh ("the City").

On June 27, 2023, in accordance with the Prehearing Conference Order, Prehearing Memoranda were timely filed by PWSA, I&E, OCA, OSBA, Pittsburgh United, the School District and the City.

Prehearing Conference

On June 29, 2023, a Prehearing Conference was held as scheduled. The following parties were represented by counsel: PWSA, I&E, OCA, OSBA, Pittsburgh United, the School District, and the City. At the Prehearing Conference, PWSA agreed to voluntarily extend the

suspension date of the Tariffs to February 15, 2024, and the parties agreed to a litigation schedule which reflected this extension.⁶

The parties also agreed to other procedural matters including the manner of service, and the number and format of public input hearings. No party opposed the Petitions to Intervene, PWSA's FPPTY Petition, and PWSA's Petition to consolidate the DSIC and CAC Petitions with the Rate Filing. The parties also discussed OCA's proposed modifications to discovery, which was supported by I&E and OSBA and partially opposed by PWSA. (Tr. at 42). Next, I&E opposed PWSA's Revenue Consolidation Petition, specifically, the consolidation of the stormwater revenue requirement with the water and wastewater revenue requirement on statutory grounds.⁷ As for the remaining parties, OSBA indicated support for I&E's position; OCA and Pittsburgh United supported PWSA's position; and the School District and the City took no position. (Tr. at 16-17).

On July 6, 2023, PWSA filed a Motion for a Protective Order.

On July 10, 2023, a Scheduling Order was issued which, *inter alia*, memorialized the litigation schedule adopted at the Prehearing Conference, granted the Petitions to Intervene filed to date, granted PWSA's petitions to consolidate the proceedings, and modified the Commission's discovery regulations.⁸ In a second Order entered on July 10, 2023, I granted PWSA's opposed Revenue Consolidation Petition. In a third Order entered on July 10, 2023, I granted PWSA's unopposed Motion for a Protective Order, and a Protective Order was issued.

Filings subsequent to Prehearing Conference / public input hearings

Subsequent to the Prehearing Conference, four individual *pro se* consumer Formal

⁶ Accordingly, on June 30, 2023, PWSA voluntarily filed Tariff Supplements to reflect suspension dates of February 15, 2024.

⁷ I&E argued that 66 Pa.C.S. § 1311(c), which was cited by PWSA as support in its Petition, did not support such a conclusion and any waiver was inapplicable. (Tr. at 12-13, 14-15).

⁸ On July 13, 2023, I issued an Amended Scheduling Order concerning only paragraph number 22 of the Scheduling Order which addressed the brief and rates tables of the parties.

Complaints were filed and/or docketed. These Complainants and their corresponding docket numbers include Lisa Banal (C-2023-3041703); Jonathan Bergholz (C-2023-3041707, C-2023-304170, and C-2023-3041709); Katherine Shingler (C-2023-3041815, C-2023-3041816, and C-2023-3041817); and Renee Abrams (C-2023-3041818).⁹

On July 14, 2023, a Petition to Intervene in the Stormwater Proceeding was filed by River Development Corporation (“RDC”) by and through “Cheryl R. McAbee, Pro Se.” In this Petition, Ms. McAbee averred that she is the President of RDC, that she is a licensed Pennsylvania attorney, but that she is proceeding as a “pro se attorney” due to lack of trial experience and experience before the Commission.¹⁰

I deemed RDC’s Petition to Intervene defective on its face, since it was unclear whether Ms. McAbee intended to represent RDC as a licensed Pennsylvania attorney, as required by Commission regulations,¹¹ or Ms. McAbee wished to proceed *pro se* in some other capacity or non-active party. However, after a dialogue with Ms. McAbee at the first public input hearing held on July 25, 2023, concerning RDC’s representation and Commission regulations, Ms. McAbee stated she wanted to proceed as RDC’s counsel. Therefore, Ms. McAbee also stated she would file an amended Petition to Intervene, clearly providing for her appearance and representation of RDC as attorney of record. (*See* Tr. at 103-105 for this discussion of RDC’s representation).

On July 26, 2023, a “Corrected Petition to Intervene in the Stormwater Proceeding by RDC” was filed by Ms. McAbee, Esquire, as attorney of record for RDC. Over no objection, RDC’s Petition to Intervene was granted by Order issued on July 28, 2023.

A total of six public input hearings were held over three days during which a total of

⁹ None of the *pro se* Complainants were active litigants throughout this proceeding, or testified at the public input hearings.

¹⁰ *See* RDC’s Petition to Intervene at ¶ 2, and signature on p. 8.

¹¹ *See* 52 Pa. Code §§ 1.21–1.23 (providing that a corporation must be represented by counsel in a contested proceeding such as this one).

42 witnesses testified. See Section III of this decision (“Public Input Hearings”) below for details of this testimony.

On September 5, 2023, PWSA filed a Motion to Compel responses to its Interrogatories, Set I, addressed to RDC. On September 7, 2023, I granted this Motion.

On September 29, 2023, the City filed a “Motion to Exclude and Objection to Admission of School District of the City of Pittsburgh Testimony that Violates Due Process Rights and PUC Procedural Regulations” (“Motion to Exclude”). In this Motion, the City sought the exclusion of certain testimony submitted by the School District. On October 3, 2023, the parties entered into a Stipulation which completely resolved the City’s Motion to Exclude, and said Stipulation was admitted in the evidentiary hearing. (See Tr. at 482; School District Hearing Exhibit No. 1).

Evidentiary Hearing

On October 4, 2023, the evidentiary hearing was held as scheduled. The following parties were represented by counsel: PWSA, I&E, OCA, OSBA, Pittsburgh United, the School District, and the City. No one appeared on behalf of RDC.¹² A few days prior to the hearing, I granted the parties’ joint request to exclude all witnesses, with the exception of the three witnesses for the School District, who appeared and two of these witnesses were cross-examined by the City. (Tr. at 487-510).

Also at this hearing, all pre-served written testimony and exhibits that each party respectively moved for admission into evidence was admitted into the record either by stipulation or over no objection following cross-examination. Of note, the pre-served testimony and exhibits

¹² Counsel for RDC did not indicate at any time prior to or after the evidentiary hearing, the reason for her absence, or the absence of anyone appearing on behalf of RDC.

submitted by RDC,¹³ which corporation was not represented at the evidentiary hearing, was not moved for or admitted into the record. Further, there were two joint stipulations admitted into the record – one between the School District and the City, and another one between PWSA and OCA. Due to the large number of admitted documents, see the five-page Appendix attached to this decision for a complete list of all admitted testimony, exhibits, and stipulations.

Post-evidentiary hearing

On October 17, 2023, PWSA notified the undersigned that a full settlement of all issues with all active parties had been reached. Pursuant to the Scheduling Order, the parties stated that they would not be filing Main Briefs, which were due on October 19, 2023, but instead would be submitting a Joint Petition for Settlement, together with Statements in Support of the Settlement, on October 30, 2023, the date Reply Briefs or a settlement were due.

On October 30, 2023, a “Joint Petition for Settlement of all Issues with All Parties” (“Joint Petition” or “Settlement”) was filed. The signatories include PWSA, I&E, OCA, OSBA, Pittsburgh United, the School District, and the City (collectively, the “Joint Petitioners,” “Settling Parties,” or “Parties”). The Settlement also stated that the Joint Petitioners were authorized to represent that RDC does not oppose the Settlement. (*See*, Settlement at 3, n.1). The Settlement also stated that, pursuant to the undersigned’s directive, PWSA and OCA coordinated to ensure that a copy of the Settlement was simultaneously being served to the four *pro se* consumer complainants, with a letter explaining their opportunity to file comments or responses, if any, by November 9, 2023 (“Settlement Consumer Letter”). (*Id.*)

On November 1, 2023, I received an email (“11/1/2023 email”) from Attorney McAbee, copying only my legal assistant (none of the other Joint Petitioners) stating, “We [RDC] will not stand in the way of the [S]ettlement, but we cannot support it.” Attached to this email were

¹³ During the litigation of this proceeding, and pursuant to the Scheduling Order, RDC pre-served two statements: RDC St. No. 1 (direct testimony of Dr. Robert Strauss) and RDC St. No. 2 (direct testimony of Dr. Cheryl McAbee, the same Ms. McAbee who is counsel for RDC in this proceeding; St. No. 2 was accompanied with Exhibits 1-7). *See* RDC’s Certificate of Service for reference to these pre-served statements and exhibits.

three documents: (1) an eight-page document titled, "Statement Reflecting the Concern that to Approve this One Tier Commercial Stormwater Rate will have Long Term Negative Consequences for Disadvantaged Businesses" ("RDC Statement"); (2) RDC's Exhibits 1–5; and (3) a Certificate of Service stating that said Statement "not supporting the settlement" was served on the parties of record.¹⁴ However, the docket does not reflect that RDC filed this Statement.

On November 8 and 9, 2023, pursuant to the Settlement Consumer Letter, I timely received via email letters from consumer Complainants Katherine Shingler and Renee Abrams respectively. Both Complainants object to the Settlement, which objections are filed of record. Their reasons for objecting are discussed more fully in Section VII-H of this decision ("*Pro Se* Consumer Complainants Objections to the Settlement").

On November 9, 2023, I received an email ("11/9/2023 email")¹⁵ from Attorney McAbee, copying counsel for PWSA (and none of the other Joint Petitioners). In this email, Attorney McAbee stated that she did not receive the Settlement Consumer Letter which she believed was sent to the *pro se* Complainants explaining their opportunity to file comments or responses, if any, by November 9, 2023. Next, Attorney McAbee stated in this email, "if our [RDC's] understanding is not correct then we withdraw our [S]tatement. If our understanding is correct then we want our [S]tatement entered as our response with respect to our Formal complaint."

In the interests of transparency and to avoid any *ex parte* communication, or the appearance thereof, I forwarded both the 11/1/2023 and 11/9/2023 emails I received from Attorney McAbee to all the Joint Petitioners.

The record in this case closed on November 16, 2023, to allow time for any first-class mail responses to be filed or sent to me from the other two *pro se* Complainants — Mr. Bergholz and Ms. Banal. Neither one has responded to the Settlement.

¹⁴ I note that "RDC's Statement" was dated October 30, 2023, but the certificate of service is dated the day before—*i.e.*, on October 29, 2023. As stated above, I was emailed the aforesaid on November 1, 2023.

¹⁵ I deem this email as received on 11/9/2023; however, it was indicated as sent on 11/8/2023, at 11:19 p.m.

The record in this case consists of, in addition to the pleadings filed, the 544-page transcript generated from the oral testimony at the evidentiary hearing, public input hearings, and various prehearing conferences; the 3901 pages of hearing exhibits; the Joint Petition; and the seven Statements in Support of the Joint Petition submitted by the statutory advocates and active intervenors. For the reasons discussed further below in Section VII-C of this decision (“Stormwater”), the record in this case does not include RDC’s Statement; therefore, it will not be considered in rendering this decision.

For all the reasons discussed below, this decision recommends that the Commission approve the Settlement. However, it also recommends that PWSA be directed to provide certain information with its compliance tariffs—namely, proofs of revenue and supporting calculations for water, wastewater, and stormwater services, consistent with its past rate cases; and certain information regarding any PennVest loans, as more fully explained below. After an exhaustive review of this record, I find that the Settlement is supported by substantial evidence, consistent with the Public Utility Code, and is in the public interest.

III. PUBLIC INPUT HEARINGS

Six public input hearings were held over three days. Two in-person hearings were held in Pittsburgh within PWSA’s service territory on July 25, 2023, at 1:00 and 6:00 p.m. Four telephonic hearings were held on July 27 and August 29, 2023, at 1:00 and 6:00 p.m., each day. During these six hearings, a total of 42 witnesses testified. These witnesses include: five state or local elected officials who represent customers within PWSA’s service area, several PWSA residential and/or small business customers, five advocates of the Pittsburgh multi-family residential industry, and representatives of concerned community and environmental groups.

All of the witnesses opposed the proposed rate increases. The overwhelming concern of the witnesses was that the proposed multi-year rates were too aggressive – *i.e.*, the increases were too much, too fast. Most witnesses testified that this was especially so considering that rates were recently raised, and a stormwater fee was imposed last year, adding to the ratepayers’ burden. Several small business owners were especially concerned about the size of

the proposed stormwater increase. Several witnesses also expressed frustration that they believe that these large increases are due to years of PWSA mismanagement and they want PWSA to be held accountable for its actions.

Several witnesses additionally testified to their concerns over the quality of service, including boil water advisories, sewer repair construction, unannounced water shut-offs, unrestored property damage, brown water, and inadequate community outreach over notice of the hearings. Several witnesses recognized PWSA's need to modernize its infrastructure and commended PWSA for successfully obtaining several grants to modernize its systems, but nonetheless complained of the size of the proposed increases.

Below is a summary of the witnesses' testimony, grouped together either by their similar representation and/or by issue. However, the reader is directed to the transcript for the full testimony of each witness. (Tr. at 49-155; 156-306; 322-437).

State or local officials

Five state or local elected officials who represent customers within PWSA's service area, or their representative, testified as to the detrimental effect they believe the proposed increases would have on their constituents. All of these witnesses testified that they recognized the need for PWSA to update its aging water, wastewater and stormwater systems. However, all of these witnesses testified that water is a human right and that PWSA's proposed multi-year rate increases were too aggressive, especially in light of recent rate increases.

Pennsylvania Representative ("Rep") La'Tasha D. Mayes, who represents the 24th District, described the households and families in her District by explaining that 43% of the households have a median income of \$35,000 or less; that 28.6% of families with children under the age of 18 live under the Federal poverty line; and that 21% of the households used SNAP¹⁶ benefits within the past 12 months. Rep. Mayes also described that sometime in the winter last

¹⁶ Supplemental Nutrition Assistance Program.

February, there was a boil water advisory that lasted almost a week, and many people could not afford to buy bottled water, so water buffalos were set up in her District. (Tr. at 68-70).

While Rep. Mayes recognizes that PWSA's investment in water and sewer infrastructure is long overdue, she urged that it not be done "on the back of hardworking ratepayers who can barely afford to pay their water bills already." (Tr. at 69). Rep. Mayes urged PWSA to exhaust all funding and financing options available before imposing ratepayer increases, to bring stakeholders together to create innovative options, and to keep in mind not only those who have the least access to water, but also those who can afford to pay for their water now but may not be able to do so with the substantial increases proposed by PWSA. (Tr. at 67-72).

Mr. Dan Gladis, Chief of Staff to Pennsylvania Rep. Jessica Benham, testified on behalf of Rep. Benham, who represents the 36th District. Mr. Gladis explained that Rep. Benham urges the PUC to reject the substantial proposed rate increases as too high, too fast. Mr. Gladis explained that their office every day hears stories of significant hardship that their constituents, including seniors, veterans, working families, and people of all backgrounds, face due to the effects of high inflation. Mr. Gladis also explained that, while they recognize there are important infrastructural modernization programs that PWSA is undergoing that is critical to the delivery of service, "a rate increase of this magnitude at this time has the potential to hurt far too many vulnerable Pittsburgh[ers] much more than it helps." (Tr. at 74).

Pennsylvania Rep. Abigail Salisbury, who represents the 34th District, understands that needed improvements to infrastructure are not free. "However," she testified, "we are in the middle of inflation, the likes of which is nearly unprecedented in modern times in this country, whether it be housing, food, or any other expense." (Tr. at 416). Rep. Salisbury urged the PUC to minimize the increase and spread it over a longer period of time. She also urged PWSA to work on a strategy for future infrastructure improvements that relies more on investment or other income forms rather than coming out of the pockets of its customers. (*Id.* at 417).

Ms. Becky Boyle testified on behalf of Pennsylvania Senator Lindsey Williams, who represents the 38th District of Allegheny County. Ms. Boyle stated that Senator Williams cannot support the over 20% rate increases for the next three years, including two new fees, since “asking our families and small businesses to face double digit rate increases five times in under ten years is entirely too much.” (Tr. at 184). Senator Williams noted that PWSA’s current request comes directly on the heels of several years of rate increases, including the 13.9% increase in 2018 and 8.9% increase in 2021. Although Senator Williams commended PWSA for modernizing its facilities, spearheading lead line replacements, and obtaining state and federal funding, she could not support further double-digit increases. (Tr. at 181-84).

Mr. Dewitt Walton, an Allegheny County Councilman, testified both on behalf of his constituents and as an individual PWSA customer. Councilman Walton testified that the majority of the residents in his legislative district are PWSA customers and more than 40% have a per capita income less than \$20,000, and the proposed rate increases will “decimate their ability to survive.” (Tr. at 117). While Councilman Walton recognized that PWSA offers low income programs, he stated that the assistance will not cover the rate increases themselves. As a PWSA customer, Councilman Walton testified that, if approved, the increases would reduce the quality of his life. Councilman Walton urged the PUC to reject the proposed rate increases in total, or at least raise them at a much lower level. (Tr. at 116-18).

Multi-year and size of proposed increases

As explained above, by far the overwhelming concern of PWSA customers was that the proposed multi-year rates of over the next three years was too aggressive. For example, Matthew Case, a PWSA customer, testified that he and his wife both work and budget their expenses each month, and were shocked to learn of the substantial size of PWSA’s proposed rates over the next three years. Mr. Case explained that the proposed rates are outpacing any small raises he and his wife receive from their respective employers, and inflation is making everything more expensive, such as food. (Tr. at 113-14). PWSA customer Robin Spencer described the proposed rates as “unconscionable” and that PWSA did not consider “the humanity that is going to happen, the hardship it has on people like myself.” (Tr. at 21).

PWSA customer Lee Walls echoed Ms. Spencer's comment that the proposed increases are "unconscionable." He was particularly concerned how the increases would affect Pittsburgh's large senior citizen population, many of whom are on fixed incomes. (Tr. at 145). Mr. Walls also expressed concern that if the PUC approves these "outrageous rates" of over 60%, then this will give other utilities such as the electric and gas companies, the "okay" to seek aggressive, higher rates like PWSA. (Tr. at 144-49).

Patricia McNeely, a PWSA customer, testified that a 60% increase is "unbelievable" and asked, "[h]ow about a good, like 10 [percent]?" (Tr. at 128, 131). Ms. McNeely also said that the increase is outpacing any raise she received from her employer, and she cannot go to her employer and ask for a raise to pay for her water. *Id.* Rita Porterfield, a PWSA customer, opposes the rate increases because they come on the backs of not only the lowest-income customers, but also on the working class who are just barely making it, do not qualify for payment assistance programs but are struggling to pay all their bills. (Tr. at 191-95).

Benjamin Chiszar, a disabled veteran and PWSA customer, testified that, given PWSA's recent prior rate increases starting from 2019, it would be a tremendous burden for low income people to approve PWSA's proposed increases into 2026. (Tr. at 76-78). Felicia Snyder, a PWSA customer, testified that the magnitude of the proposed increase is "absurd" and should be rejected. (Tr. at 196-99).

Catherine Brosky, a Pittsburgh resident since 1996, testified that she believes the size of the rate increases was too aggressive and that an "increase greater than 10 percent any one year is out of step with most people's average wage increase." (Tr. at 346). Candice Herriott, a 14-year PWSA customer, described herself as a "lower middle-class customer" and, as such, stated she is not eligible for customer assistance programs; however, she explained that, while she tries to pay her bills on time, it is getting harder due to the utility increases outpacing her wages. (Tr. at 274-76).

Similar complaints were expressed by other PWSA customers such as Nyota Robinson (Tr. at 217-19); Curtis Davon (Tr. at 245-49); Alex Nunley (Tr. at 258-60); Allison

McLeod (Tr. at 262-65); Dennis Terreri (Tr. at 269-71); Jonnie Leinweber (Tr. at 357); Anita Penn (Tr. at 383); and Shannon Sakes, who described the proposed increases as “tremendous and honestly shocking.” (Tr. at 376).

Accountability

Several witnesses expressed frustration that PWSA is not being held accountable for its years of mismanagement and neglect of the systems. For example, Ms. Snyder testified that due to PWSA’s years of mismanagement, current customers have to now pay the price for “the mistakes of the past, as evidenced by rampant water main breaks [and] sewer collapses throughout the City.” (Tr. at 197). Ms. Brosky testified, “I am also opposed to any increase that does not address the lack of accountability that PWSA has shown their ratepayers.” (Tr. at 347). This frustration was also expressed by witnesses Leslie Centola (Tr. at 209-12); Mr. Terreri (Tr. at 269-72); Ms. Herriott (Tr. at 274-76); and Michele Cunkoi (Tr. at 362-64).

Monopoly

Several witnesses expressed frustration that PWSA is a monopoly and thus they have no choice to seek water and/or wastewater service elsewhere, unless they move out of Pittsburgh. For example, Mr. Case explained that they do not have a choice to receive their water and sewer services from another company, which people would do if a supplier were to increase their prices so drastically. (Tr. at 113-14). Ms. Snyder testified that she is not alone in saying that she cannot afford to pay any more for service and to raise them even further will drive away inhabitants of the City, who have no choice in choosing their service provider. (Tr. at 196-99).

Similarly, Robert Rubinstein explained that while he and his wife are not considered low income, the high rates are increasingly becoming burdensome, coupled with the poor service, have him and his wife seriously considering a move from the City. (Tr. at 215).

Quality of Service

Several witnesses testified that, in their view, PWSA provides poor quality of service in several areas. For example, Mr. Rubinstein testified:

What do I get for these high rates? I get unannounced water shutoffs that last five to eight hours, get customer service lines where agents are unaware of these service interruptions, and then when they finally get to my property to actually do underground work on valve replacement, there's [damage to my] property, and it's not restored. There's only a cursory attempt throwing gravel and rocks and some grass seed that doesn't take, that never grow[s] because it's essentially sitting on gravel.

(Tr. at 215).

Richard Marini, a PWSA customer, testified that about four or five years ago during the winter, PWSA did some work on his street, but as a result, so much water drained onto the street that it left two inches of ice which the City had to repair and that the repair work is so "lousy" that as a result his driveway is so low to the street that he could not back into his street. Mr. Marini also explained that during this time, paramedics were called to his street and they had to "carry a guy in the winter from one neighborhood to the next" due to the condition of the street. (Tr. at 80-81).

Ms. McNeely expressed frustration at the water boil advisories they have received. (Tr. at 127-33). Kim Williams, a PWSA customer, testified that because her water is brown, she buys bottled water for herself and her dog. When she contacted PWSA about her brown water, PWSA only gave her a coupon for her to get a filter for her water, and she feels she should not have to pay for brown water. (Tr. at 287-94).

Phyllis Hankins is a PWSA customer, retired, 79 years-old, and on a fixed income. Ms. Hankins was particularly concerned about the quality of service and accountability of PWSA. For example, Ms. Hankins explained that PWSA blocked off the area on Hollace Street from May 24 until June 11, including putting up no parking signs, and the work is still not completed, despite tearing a man's wall down. Ms. Hankins also explained that there is a hole in

front of 638 Hollace Street which was dug by PWSA and is still not fixed. She's concerned that there is a playground near that area and one time, they left the hole open with only boards on it. Ms. Hankins also testified that while they were working on the hole one time, as she was cleaning her sink, all of a sudden her water was shut off without any notice. Ms. Hankins is concerned that she, or someone else, could have been in the shower or sick. Although she went outside and asked the men working on the hole why the water was shut off with no notice, she did not get a satisfactory answer, so she reported it to 311 (non-emergency Pittsburgh concerns/feedback). (Tr. at 140-43).

Multifamily Rental Industry

Five witnesses spoke on behalf of their respective organizations concerning the multifamily rental industry. Caroline West is an officer of the Apartment Association of Metropolitan Pittsburgh ("AAMP") which Ms. West stated represents the majority of the apartment owners and property managers in the region's multifamily rental market, including the City. Ms. West also owns and manages multifamily rental units in the City and the surrounding areas, and is a PWSA customer. Ms. West complained of the lack of PWSA's transparency as to the impact the proposed rates would have on the different customer classes and account classification other than the "typical residential customer with a 5/8 meter size" or a "commercial customer with a 1-inch meter." (Tr. 252-53).

Ms. West explained that PWSA's May 9, 2023, Notice of the Proposed Rate Changes, clearly sets forth the proposed rate increases for these typical customers but not for commercial customers, which includes multifamily residential buildings with ¾-inch, 1½-inch, 2-inch, 3-inch or other meter sizes. Ms. West explained:

From what I have been able to glean from the May 9 notice, however, is that while a residential property owner whose home has a five eight inch meter will face a proposed 58.2 percent increase which is of itself exorbitant, a commercial property owner whose building has a one inch meter will face a 70.1 percent increase. A building with a two inch meter could face a 71.9 percent increase, and a building with a four inch meter could face a 72.2 percent increase over the next three years. . . .

[W]hy are commercial customers seemingly bearing a grossly disproportionate share of the proposed increase when they are already subject to increased costs and responsibilities? For example, every commercial property waterline must be equipped with a backflow prevention device, which is to be tested every 12 months at a minimum. Fire lines are also required for many commercial customers. Additionally, commercial property owners are responsible for the maintenance of the entire water service line from the water main to the water meter, whereas residential property owners, their responsibility is only from the curb box and the water meter.

(Tr. at 253).

Andre Del Valle is the Vice President of Government Affairs of the Pennsylvania Apartment Association (“PAA”), which represents over 273,000 units and 300 property management companies across Pennsylvania, which includes over 37,000 units and 21 property management companies in Pittsburgh. Mr. Del Valle expressed similar frustration and stated, “our industry doesn’t have clarity on what these costs would exactly be, as buildings across Pittsburgh, even within our own industry, use different meter sizes. This creates a transparency issue for our members and our industry, as owners need to forecast and budget accordingly for repairs, expansions and staffing in order to keep our communities at a standard that provides safety and a true sense of community for our residents.” (Tr. at 284).

Mr. Del Valle also explained he sought information from PWSA’s website, PGH20.com, where the 2023 current rates breaks down the meter size, the minimum gallons, the minimum charge for water, the minimum charge for sewer, and the total minimum charge. However, “we began looking at the meter sizes our industry used and quickly realized that the costs as advertised were based off of a 1-inch meter, without doing a similar breakdown for the other size meters including ¾, 1½, 3, 6, 8, 10 inch-meters.” (Tr. at 283-84).

David McSorley is the Life Director of the Apartment Association of Metro Pittsburgh and board chairman of the Sterling Land Company, a property management and development company in Pittsburgh. Mr. McSorley also complained of lack of information as to differing metering sizes used in the multifamily or commercial industries. (Tr. at 369-70). Mr.

McSorley also added that, “I think it’s disproportionate that the commercial customers have to pay this [higher] share of the rate increase, when, in fact, there is a lot of restrictions on commercial customers . . . [such as] we have fire lines [and] backflow preventers have to be inspected every year.” (Tr. at 370-71).

Jessee Silverman is an attorney with Morgan Properties, which manages The Docks, a PWSA customer. Mr. Silverman expressed the same concern as the others, explaining, “we are still a bit in the dark as to the amount of the increase for meters of the size that are typically found on multifamily apartment buildings. And that in turn makes it difficult for us to advise our residents on what to expect.” (Tr. at 387-88).

Other

Derek Scott testified that he is a PWSA customer, property owner, and owns a construction company that has done a number of infrastructure projects for the City. Mr. Scott testified that PWSA and the City need to be more innovative and use technology “to alleviate this stormwater issue.” (Tr. 123). Mr. Scott acknowledged that the infrastructure is old, but urged the development of a long-term plan, as other countries do, not a three-year plan. (Tr. at 122-26).

Sonia Rupcic is a PWSA customer who stated that she fully supports the capital improvements PWSA is making, and understands that the money must come from somewhere. However, in the interests of environmental justice, she urges PWSA to implement the increases more equitably by tying the increases to property assessments. This way, those living in low income communities should be charged less than those living in higher-income communities such as herself. (Tr. at 187-90).

Melissa McSwigan, a PWSA customer, testified that her concern is that PWSA does not charge for actual water usage but bases its rates on meter size, which does not give customers any incentive for water conservation. Ms. McSwigan explained that PWSA suggested to her that if she downsized her meter size, this would reduce her bills; however, she

was told by a plumbing company that downsizing her meter size was not possible due to the “configuration and topography,” and there would be costs associated with downsizing. (Tr. at 200-03).

Ms. Brown applauded PWSA’s efforts in rectifying their aging infrastructure including replacing lead lines, and their Stormwater Green Infrastructure Programs. Ms. Brown also realizes that PWSA must meet certain EPA and DEP requirements which are unfunded mandates. However, while Ms. Brown therefore supports a rate increase, she urged PWSA to “go back to the table...and look at how they can make the rate increase more equitable” by not placing the burden on the low and middle-income working class. (Tr. at 204-06).

Leslie Centola testified both on behalf of UpstreamPgh as a community advocate and as an individual PWSA customer. Ms. Centola explained that UpstreamPgh is a local nonprofit focused on clean water, stormwater management and climate justice. Ms. Centola acknowledged that there is an urgent need for new infrastructure to ensure clean drinking water, but also testified that current ratepayers are paying for the negligent mismanagement of the past. Ms. Centola argued that water is a basic human right, is life-sustaining, and people should not have their water shut off because they cannot afford it. Ms. Centola urged PWSA to work with the community to develop fair and equitable policies. (Tr. at 209-12).

Curtis Davon is the Organizing Director of Clean Water Action and, as such, works with PWSA customers on a daily basis, especially low income customers. Mr. Davon testified that the proposed rates, totaling nearly 69% by 2026, is unacceptable as it puts a heavy burden on people already struggling to get by. Mr. Davon commended PWSA for its proposals to increase eligibility for its Bill Discount Program. Mr. Davon urged the PWSA to do the following: prioritize the need for projects; align new construction with the views of the community; hold community meetings in more places to make them more accessible; focus on equity when it comes to watersheds; initiate effective stormwater mitigation such as providing customers more than a one-time \$40 credit for installing a rain barrel but should be a continuing mitigation incentive; do a better job at community outreach for all financial options such as using

door hangers, reaching out to council, going to community meetings and centers, and working with organizations such as the Clean Water Action. (Tr. at 245-49).

Mr. Nunley urged PWSA to think outside the box to address costs. Mr. Nunley explained that he is originally from the city of Milwaukee where that city structures its water and sewer organization very differently, including turning waste into a value proposition by turning it into a milorganite product as commercially available fertilizer derived from Milwaukee's sewage solids. Mr. Nunley also suggested that PWSA explore selling naming rights to their water towers and reservoirs, and target the rate increases towards commercial and nonprofit customers. (Tr. at 258-60).

Ms. Snyder urged PWSA to further seek out such resources, or get other innovative resources such as selling ad space on water towers, or selling naming rights to reservoirs. (Tr. at 196-99).

IV. FINDINGS OF FACT

The findings of facts below have been stipulated to by the Parties in the Joint Petition.¹⁷

Parties

1. PWSA is a municipal authority. It is a body politic and corporate, organized and existing under the Pennsylvania Municipality Authorities Act, 53 Pa.C.S. § 5601, *et seq.*

2. PWSA is regulated as a public utility pursuant to the Public Utility Code. 66 Pa.C.S. §§ 3201–3316. As a public utility, the Authority provides water service to

¹⁷ See Appendix A to the Joint Petition. Appendix A contains 75 stipulations of facts and procedural history. However, because the procedural history was discussed above, and many of the other stipulations include the description of the Settlement terms, key positions of the parties during litigation, and conclusions of law, these stipulations are not all listed here, but are discussed throughout this decision.

approximately 80,000 residential, commercial and industrial customers in portions of the City; the Borough of Millvale; and portions of Reserve, O’Hara, and Blawnox Townships, Allegheny County. The Authority also provides wastewater conveyance service and stormwater service to customers located in the City and conveys wastewater for portions of twenty-four neighboring communities.

3. I&E was created by the Commission pursuant to 66 Pa.C.S. § 308.2(a)(7) as a prosecutory bureau for purposes of, *inter alia*, representing the public interest in ratemaking matters before the OALJ. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered Aug. 11, 2011, at 4-5).

4. OCA is empowered to represent the interests of Pennsylvania consumers before the Commission, pursuant to Act 1976-161 of the General Assembly, as amended, 71 P.S. §§ 3-901–3-907. OCA is statutorily charged with representing the interests of consumers in matters properly before the Commission related to PWSA (a water and sewer authority in a City of the Second Class). 66 Pa.C.S. § 3206(a).

5. OSBA is authorized by the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41–399.50, to represent the interests of small business consumers of utility services in matters before the Commission.

6. Pittsburgh United is a coalition of community, labor, faith, and environmental organizations committed to advancing the vision of a community and economy that works for all people. Its members work collectively to build a community whereby all workers are able to care for themselves and raise their families, sharing in the prosperity generated by economic growth and development.

7. The City, a Home Rule Municipality organized and existing under the Home Rule Charter and Optional Plans Law, 53 Pa.C.S. §§ 2901–2984, and a city of the second class by statutory designation, is a political subdivision of the Commonwealth of Pennsylvania.

The City established PWSA in 1984 to assume responsibility for operating the City's water supply and distribution and wastewater collection systems.

8. The School District is organized and maintains its existence under the Act of March 10, 1949, P.L. 30, known as the Public School Code of 1949, as amended. The School District is classified by population as a first class-A school district and is fully accredited by the Middle States Association for Elementary and Secondary Schools.

9. As an independent government unit in Pennsylvania, the School District owns real property comprising of more than sixty-five buildings in the City of Pittsburgh and is a PWSA water, wastewater and stormwater customer at many of the School District's properties.

10. RDC is a Domestic Business Corporation established in 1996 and is a certified Minority & Women-Owned Business Enterprise. As a business with a septic system, RDC became a customer of PWSA in January 2022 when stormwater rates were initially implemented.

Progress of the Proceeding / Other

11. The Parties in this proceeding began serving discovery to PWSA on May 18, 2023, with the last set of discovery served to PWSA on September 12, 2023. PWSA reports that it responded to almost 1,200 discovery requests (inclusive of subparts) and that the parties collectively responded to nearly 300 discovery requests from PWSA and each other.

12. Pursuant to the litigation schedule, written direct testimony was served on August 9, 2023, by I&E, OCA, OSBA, Pittsburgh United, the School District and RDC. On September 8, 2023, written rebuttal testimony was served by PWSA, OCA, OSBA and Pittsburgh United. Written surrebuttal testimony from I&E, OCA, OSBA, the School District and Pittsburgh United was served on September 22, 2023. While PWSA also served written surrebuttal testimony on September 22, 2023, it withdrew it. On September 29, 2023, written rejoinder testimony was served by PWSA.

13. Until January 1, 2025, PWSA is required to comply with the terms of a 2019 Cooperation Agreement between the City and PWSA. PWSA's obligations under the 2019 Cooperation Agreement include, but are not limited to: (i) responsibility for the operation, maintenance, repair and replacement of water mains in City Parks, and for existing and new service lines, which provide water service to City Parks larger than 50 acres; (ii) responsibility for the operation, maintenance, repair and replacement of sanitary sewer and combined sewer mains in City Parks, and for existing and new sewer laterals within City Parks larger than 50 acres; and (iii) responsibility for the operation, maintenance, repair and replacement of water mains providing water service to City properties, and the operation, maintenance, repair, and replacement of sanitary sewer and combination sewer mains on City properties.

14. The 2019 Cooperation Agreement also addresses PWSA's obligations relating to service lines and sewer laterals on City properties, establishes a phase-in of PWSA charges on City-owned metered properties for all water usage and fire hydrant usage, and provides for the assessment of a City Payroll Tax on PWSA, as well as taxes that would be due pursuant to the Pennsylvania Public Utility Realty Tax. (PWSA St. No. 1 at 21-22; PWSA St. No. 1-R at 12-13; PWSA Exhibit WJP-2).

V. TERMS AND CONDITIONS OF THE SETTLEMENT

The Settlement is a 20-page document signed by PWSA, I&E, OCA, OSBA, Pittsburgh United, the School District, and the City (collectively, the "Joint Petitioners," "Settling Parties," or "Parties"). The Settlement also states that the Joint Petitioners were authorized to represent that RDC does not oppose the Settlement. (*See*, Settlement at 3, n.1).

Accompanying the Settlement are appendices A through N. Appendix A is the Procedural History, Stipulation of Facts, and proposed Conclusions of Law and Ordering Paragraphs. Appendix B is the Allocation of Proposed Settlement Rate Increase By Customer Class and By Utility Service. Appendix C is the Customer Bill Impacts; Comparison Existing Rates, PWSA Original Request and Proposed Settlement Rates. Appendix D is the Revenue Allocation Comparison of Existing Rates, PWSA Original Request and Settlement Proposed

Rates. Appendices E through G are the *Pro Forma* Supplements to Tariffs Water, Wastewater, and Stormwater respectively.¹⁸ Appendices H through N are the seven individual Statements in Support of the Settlement submitted by each of the seven Joint Petitioners.

The essential terms of the Joint Petition for Settlement are set forth on pages 6-15, Section III, ¶ 9 of the Settlement. These terms are stated below verbatim and, for ease of reference to the reader, retain the same numbers, letters, headings, and subheadings, as they appear in the Settlement filed with the Commission on October 30, 2023. These terms are:

TERMS AND CONDITIONS OF SETTLEMENT

9. The Joint Petitioners support approving PWSA's May 9, 2023 base rate filing in this proceeding as modified by the terms and conditions that follow.

A. Revenue Requirements, Rates, and Charges

1. Rates

- a. Effective February 15, 2024 a total base rate revenue increase of \$35,997,325, exclusive of 5% DSIC, will be implemented and allocated as follows:
 - i. The rates to collect the settlement level of water, wastewater and stormwater revenues from each class are shown on Appendix B.
 - ii. PWSA will recover the water, wastewater conveyance and stormwater revenue from each utility service and by each customer class as shown in Appendix C.
- b. PWSA will amortize its \$263,215 COVID-19 expense claim over a two year period.
- c. As the contractual timelines become available for renegotiation of PWSA's current wholesale water contracts, PWSA agrees to engage in good faith negotiations to negotiate new rates intended to move closer to PWSA's tariffed wholesale rate.

2. Base Rate Case Stay Out

- a. PWSA shall not file a general rate increase pursuant to 66 Pa C.S. § 1308(d) any sooner than January 1, 2025 for rate

¹⁸ On November 2, 2023, PWSA submitted a corrected, complete Exhibit E, *Pro Forma* Supplement to Tariff Water (red-line of current tariff), since this Exhibit was initially submitted as incomplete, and asked the Secretary's Bureau to have it included as part of the Joint Petition.

implementation in 2026. This paragraph does not apply to extraordinary or emergency rate relief pursuant to 66 Pa. C. S. § 1308(e) (or upon a petition for emergency rate increase), including, but not limited to, a final unappealable court or Commission decision terminating PWSA’s legal ability to continue to charge stormwater rates pursuant to its Stormwater Tariff.

3. Rate Design and Charges

a. Minimum Charge

- i. PWSA will undertake the software and billing system changes necessary to be able to implement a rate structure change to remove the minimum allowance.
- ii. As part of its next base rate filing, PWSA will propose to remove the minimum allowance with the then-proposed rate effective date and will include a customer bill impact analysis that illustrates the effect on customer rates of the rate structure change.
- iii. In its next rate case, PWSA will include a customer cost analysis and rate proposals that fully eliminate usage allowances.

b. PennVest Charge

- i. PWSA will implement the software and billing system changes necessary to be able to recover the debt service associated with PennVest loans in accordance with 52 Pa Code §§69.361 – 69.364 but the rate will be set at \$0.00 effective February 15, 2024.
- ii. PWSA may seek recovery of the debt service costs of PennVest loans no earlier than January 1, 2025.
 - (a) PWSA will provide notice of its intent to recover qualified PennVest loans consistent with 52 Pa. Code §69.363.
 - (b) PennVest loan obligations satisfying the requirements of 52 Pa. Code §69.363(d) may include loans closed on or after January 1, 2025. The term “loans” is understood to be defined as excluding any PennVest grants. When applicable, the final settlement date of loans funded through the PennVest Programmatic Financing (Pro-Fi) program is what will be used to determine which loans closed on or after January 1, 2025. The loans may not be included in the surcharge until the plant is used and useful.

- (c) The PennVest Charge will be displayed as a separate line item on customer bills.
- iii. PWSA withdraws its request to seek recovery of costs related to the federal government program known as the Water Infrastructure Finance and Innovation Act (“WIFIA”) through a separate reconcilable charge to customers.
- iv. The “PennVest Charge” would be approved in lieu of PWSA’s initially proposed Infrastructure Improvement Charge (“IIC”).
- c. PWSA withdraws its proposal to implement a Customer Assistance Charge (“CAC”)
- d. In its next filed base rate case, PWSA agrees to remove its readiness-to-serve component from its monthly water and wastewater conveyance customer charges. All parties reserve the right to challenge any component of the customer charge in future base rate proceedings.

B. Third Party Collection Agency

- 1. PWSA will include in its training of any third party collection agency with which it enters into a debt collection services contract the requirement to warm transfer to PWSA any individuals seeking to re-establish service with PWSA so that such arrangements can be made with PWSA directly.
 - a. Any third party collection agency retained by PWSA will be trained to affirmatively ask whether an individual wishes to seek service restoration.
 - b. If PWSA enters into a contract, PWSA will track and report in the next rate case the data from the collection agency, including how many warm transfers were made and what happened with those customers.

C. Stormwater

- 1. Stormwater Credit Program
 - a. Within 60 days of approval of a final order, Parties to the settlement will contact PWSA to set up a collaborative meeting to work on identifying ways to help reduce impervious areas or to implement stormwater controls on property subject to the stormwater fee and to help customers obtain credits offsetting stormwater fees as a result of those efforts.
 - i. PWSA agrees to inform and advise Parties of the collaborative regarding paths to reduce impervious areas or gain stormwater credits.

- ii. PWSA agrees to assist Parties of the collaborative in identifying potential funding opportunities and to use best efforts to assist with securing any such opportunities available, to the degree that such opportunities are available.
- iii. Parties of the collaborative are not precluded from discussing alternatives to a stormwater fee other than basing it on square footage of impervious surface for PWSA's consideration in making future stormwater fee rate filings with the Commission.

2. Education and Outreach

- a. PWSA will develop an outreach and education plan related to available assistance and mitigation measures connected to its stormwater fee. This outreach and education plan will include training and call scripting for PWSA's customer service representatives ("CSRs") so that CSRs are prepared to provide the following mitigation; information, where applicable.
 - i. prompt stormwater customers about whether they have adopted or have an interest in adopting green stormwater
 - ii. discuss the benefits of practicing green stormwater mitigation, including the \$40 credit for rain barrels; and
 - iii. discuss whether the customers are enrolled in, and eligible for, the Bill Discount Program to take advantage of available stormwater discounts.
- b. Enhanced outreach and education related to stormwater will include a plan for community engagement, crafted in conjunction with the LIAAC and utilizing feedback from previous stormwater strategic plan outreach.
- c. The outreach and education plan will continue until the implementation of PWSA's next base rate case but could be continued at that time by the agreement of the Parties.

3. Arrangements Applicable to the Pittsburgh School District ("School District")

- a. Because of the public nature of the School District and its unique ability to provide land for public use and benefits, as well as its potential ability (with assistance from PWSA) to access grants and other funding to assist with the implementation of stormwater mitigation projects, PWSA and the School District recognize that opportunities exist to work together to potentially

address PWSA's and the School District's stormwater mitigation efforts.

- b. Until PWSA files its next base rate case, both PWSA and the School District shall appoint designated persons to be the point of contact for issues relating the School District's stormwater management activities.
- c. Stormwater Credit Calculated Based on Existing Infrastructure
 - i. Consistent with PWSA's current stormwater credit program permitting non-residential property owners the ability to reduce their stormwater charges for existing structures that comply with the City of Pittsburgh's 2016 and 2019 development standards or control runoff similarly, PWSA has reasonably estimated that the School District would likely have been able to qualify for a 5% credit to the School District's stormwater fee effective January 12, 2022 if it had made an application to PWSA.
 - ii. Based on this and in consideration of the other terms of the agreement reached between PWSA and the School District, PWSA agrees to apply a 5% credit retroactive to January 12, 2022 ("Retroactive Credit") to the first stormwater bills issued to the School District within the month after the effective date of the rates as approved by the Commission in this proceeding.
 - iii. The Retroactive Credit will be applied in equal installments over a four-month basis. In recognition of the volume of accounts and numbers of stormwater parcels for the School District and the varying amounts billed to each account on a monthly basis, PWSA shall retain the discretion as to the mechanics of applying the Retroactive Credit to the School District accounts to equal the monthly installment amount until the Retroactive Credit is fully applied.
 - iv. Both parties agree that application of stormwater credits after the Retroactive Credit has been fully applied is contingent upon and subject to the School District and PWSA working in good faith together to fully evaluate the School District's properties to determine, consistent with PWSA's Stormwater Credit Program requirements, the amount of the future stormwater credits to be applied to the School District on a going-forward basis.
 - v. Both parties agree to work in good faith to complete the determination of the actual stormwater credits applicable to the School District within one year of a final Commission

order entered in this proceeding and, as such credits are verified, they will be applied to the appropriate parcels.

- d. Longer Term Best Management Practices (“BMPs”)
 - i. PWSA will advise, and where appropriate in the parties’ reasonable judgment, jointly work with the School District to apply for funding opportunities from third parties to assist in improving the School District’s stormwater management practices, conversion of impervious surfaces to pervious surfaces and any other steps reasonably available to qualify for credits pursuant to PWSA’s prevailing Stormwater Credit Program.
 - ii. The School District agrees to work cooperatively with PWSA regarding potential property presently owned by the School District that may be available for the construction of stormwater controls /projects/measures.
 - iii. PWSA shall assist the School District in identifying potential projects and provide guidance to the School District in hiring consultants and contractors for the successful completion of the identified stormwater controls/projects/measures.
 - iv. PWSA will also provide guidance to the School District on the operation and maintenance of the constructed stormwater controls/projects/measures.
- e. In consideration of the settlement terms and for purposes of this settlement only:
 - i. The School District agrees to not pursue in this or any other Pennsylvania Public Utility Commission proceeding its litigation position that stormwater charges are an unlawful tax that the School District, as a tax-exempt entity, is not required to pay or any other general policy-related challenge to the Stormwater rates that will be established in this proceeding.
 - ii. However, notwithstanding Section (e)(i), the School District is not precluded from raising such arguments in:
 - (a) PWSA’s next base rate case or in any subsequent PWSA rate proceeding; or
 - (b) Any proceeding initiated by the Pennsylvania Public Utility Commission or another entity to determine whether changes in PWSA’s stormwater and other rates are required as a result of an appellate court order or direction or other change in law; or

- (c) Any civil or appellate proceeding unrelated to a Pennsylvania Public Utility Commission proceeding which is not initiated by the School District against PWSA; or
 - (d) Any civil or appellate proceeding following the issuance of a court order or action of the General Assembly which, in the School District's view, potentially changes the legal framework applicable to stormwater rates.
- iii. Notwithstanding this agreement with the School District, PWSA reserves all its rights to support and defend its current stormwater rate and structure in any forum where such challenge to it may arise. Nothing in this Settlement shall constitute an agreement or waiver of PWSA's position that the Pennsylvania Public Utility Commission has exclusive jurisdiction over the legality of its stormwater rates or any other argument supporting their legality.

D. Customer Service

1. Call Center Performance

- a. PWSA's Call Center will use best efforts to meet its internal standards of an average answer time of 1 minute and an abandonment rate of 3% or less for an average of all its customer queues each quarter. The quarterly calculations of the average answer time and abandonment rate will be separated by queue specific performance.

2. Screening for Eligibility for Customer Assistance Programs

- a. PWSA shall develop and implement call scripting and checklists for its CSRs so that CSRs are required to assist in screening customers for eligibility in its low income assistance programs.
- b. PWSA will screen all new and moving customers for income level and eligibility for assistance at the time their service is established. If a customer indicates through this screening, in both 2.a and 2.b, that they may reasonably have low income status, the customer will be provided a warm referral to the PGH2O Cares team so that the customer can learn about and enroll in PWSA's low income customer assistance programs as eligible.

3. Root Cause Analysis

- a. PWSA shall update its "root cause" analysis to include evaluation of informal customer complaints submitted to the

Commission's Bureau of Consumer Services ("BCS") as well as formal customer complaints filed with the Commission.

- i. The evaluation will include:
 - (a) Any trends or patterns regarding the informal and formal complaints;
 - (b) Any trends or patterns with respect to BCS' informally verified infractions.
 - ii. The analysis shall be completed using internal staff resources.
 - iii. The results shall be reported either within one (1) year of a Final Order in this proceeding or as part of its next base rate filing, whichever is earlier. The results will include a description of any reforms PWSA plans to adopt.
4. PWSA withdraws its proposal regarding the cost responsibility for convenience fees.

E. Low Income Customer Assistance Programs

1. Cross Enrollments

- a. Within thirty (30) days of the entry of an Order in this case the PWSA's Cares Team will contact the City of Pittsburgh and the Allegheny Department of Human Services ("Allegheny DHS") to identify potential mechanisms through which it can cross-enroll customers through other municipal offices serving the City of Pittsburgh or through coordination with programs or services administered by the Allegheny DHS.
- b. PWSA will also solicit leads for contacts from its LIAAC members and report the status of this process to LIAAC

2. Household Affordability Study

- a. Within one year of the final order in this proceeding, PWSA will update its 2019 Household Affordability Study which will include, at minimum:
 - i. Identification of geographic areas with high concentrations of PWSA's lowest income customers
 - ii. Identification of targeted outreach areas based in these identified geographic areas and a plan as to what, where and how such targeted outreach should be pursued.
 - iii. Identification of any patterns or trends regarding customers in these identified areas who exhibit payment difficulties that could be reasonably associated with inability to pay and a plan as to how such patterns or trends are to be identified and tracked.

- iv. An analysis of the burden levels of low income customers, by household federal poverty level (“FPL”) (including 0-50%, 51-100%, 101-150%, 151-200%, 201-250% and 251-300% FPL tiers) and various usage levels (ranging between 1,000 to 6,000 gallons), based on service type (i.e. water, wastewater, stormwater, and combined services) at then-current rates.
- v. Updated estimated low income customer count based on census data of the PWSA’s service territory, and disaggregated by service type (e.g. water, wastewater, stormwater, combined).
- b. A preliminary draft will be shared with and discussed among the LIAAC members and PWSA will consider, in good faith, whether to incorporate any feedback provided as part of the final study. The final study will be provided to members of the LIAAC. PWSA will explain, if applicable, why any recommendations of LIAAC members were not incorporated into the final study.

3. Bill Discount Program (“BDP”)

- a. PWSA agrees to increase from 50% to 60% the volumetric discount available to customers with annual income at or below 50% of FPL.
- b. PWSA will implement its proposal to expand the BDP maximum income eligibility from 150% to 200%.
- c. PWSA withdraws its proposal to revise the current BDP structure effective January 1, 2025 in recognition of its agreement not to implement its proposed rate structure change to remove the minimum charge.
- d. In recognition of the fact that PWSA will be removing the minimum charge and the readiness-to-serve component from the customer charge in its next rate case and this will adversely impact the discount available to BDP customers, in its next base rate case, PWSA will propose a BDP structure that ensures that BDP customers receive at least the same discount on a total bill basis as they are currently receiving under the rate design implemented as a result of this settlement.
- e. PWSA will provide a 50% reduction for BDP participants for the PennVest Charge.
- f. Arrearage Forgiveness Program (“AFP”)
 - i. PWSA agrees to increase the current \$30 credit toward a participant’s arrears to \$40.

- ii. In the next base rate case filed by PWSA, it shall propose to implement a change to its AFP that would allow then existing and all future participants to receive arrearage forgiveness over no longer than a 36 month period and will not require AFP participants to make a co-payment towards the pre-program frozen arrears. All parties reserve their rights regarding any cost recovery proposal proposed regarding the AFP.

4. Hardship Fund

- a. PWSA will implement its initial proposal to allocate two separate annual grants; one to be distributed to eligible water customers and one to be distributed to eligible wastewater customers.
- b. The maximum Hardship Fund grant will be increased from \$300 to \$450.
- c. PWSA agrees to include an allocation in rates as necessary to continue to fund the Hardship Fund when current settlement funds are exhausted and to the extent employee and other volunteer donations are insufficient.

5. Low Income Assistance Advisory Committee (“LIAAC”)

- a. PWSA commits to leading a discussion of the LIAAC members regarding the following topics:
 - i. Evaluation of the potential benefits of developing a program to provide no-cost stormwater mitigation measures for customers.
 - ii. Consideration of how enhanced technology could increase the enrollment and retention of low income customers in PWSA’s low income customer assistance programs.
 - iii. Discussion of how or whether to encourage low income tenants to transfer service into their own name.
- b. As part of its next base rate case, PWSA will report on the results of its collaboration with LIAAC regarding the above topics and include any proposed recommendations resulting from the collaboration.

F. Engineering and Operations Issues

1. Customer Complaint Logs

- a. PWSA agrees to maintain complete data regarding customer complaints, work order and service logs which can be made available via Excel in response to any discovery requests by the parties in, e.g., PWSA’s next base rate case. If the data is requested as part of discovery, the parties agree to collaborate on

an informal basis to ensure that it is provided in a mutually acceptable and reasonably sortable format.

2. High Pressures
 - a. PWSA will continue to capture pressure inquiries or complaints in its work order logs.
3. Isolation Valves
 - a. PWSA will continue its valve exercising program where all valves are inspected and exercised on a 5-year cycle.
 - b. Starting by or before the fourth quarter of 2024, PWSA will use best efforts to inspect and exercise critical valves on a 3-year cycle.
 - c. PWSA shall maintain records of when each valve is exercised.
4. Meter Testing and Replacement
 - a. PWSA will use best efforts to test or replace 8,000 meters per calendar year after 2023 until all undocumented meters are either tested or replaced.
5. Flushing Distribution System.
 - a. PWSA will continue to make an effort to identify, locate and track dead-end lines to make sure they have a blow-off or hydrant so they can be flushed.
6. Surface Restoration
 - a. PWSA will continue to coordinate with the City of Pittsburgh and other municipalities to replace water and sewer mains, as much as possible, just prior to repaving.
 - b. PWSA will continue to coordinate projects that are not part of an emergency, Department of Environmental Protection or Environmental Protection Agency deadline with the City of Pittsburgh, the Department of Transportation and other public utilities.

Joint Petition, at 6-15.

Additionally, the Settlement is conditioned upon the common conditions found in most settlements filed before the Commission. For example, the Settling Parties agree to waive exceptions to this decision if the Joint Petition is approved by the Administrative Law Judge without modification. Should the Commission disapprove the Joint Petition or modify the terms, the Settling Parties reserve the right to withdraw the Joint Petition. Furthermore, the Settlement is

made without any admission against or prejudice to any position which any petitioner may adopt in the event of any subsequent litigation of these proceedings or any other proceeding. (*See* Settlement at 15-17 for all of the additional terms and conditions).

VI. LEGAL STANDARDS

All rates established by the Commission for public utilities must be “just and reasonable.” 66 Pa.C.S. § 1301. As part of the implementation of Chapter 32 of the Public Utility Code, the Commission determined that the rate base/rate of return ratemaking methodology, the most common method employed by large investor-owned utilities for determining just and reasonable rates, was not a good fit for PWSA.¹⁹ Instead, PWSA was directed to utilize the cashflow ratemaking method similar to that used by Philadelphia Gas Works (PGW).²⁰

When using the cash flow method for establishing rates, rather than considering whether rates will yield a fair rate of return on property,²¹ the Commission considers the factors set forth in Section 69.2703(a) in determining whether rates are just and reasonable:

- (1) [PWSA’s] test year-end and (as a check) projected future levels of non-borrowed year-end cash.
- (2) Available short term borrowing capacity and internal generation of funds to fund construction.
- (3) Debt to equity ratios and financial performance of similarly situated utility enterprises.

¹⁹ *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, Docket No. M-2018-2640802 (Final Implementation Order entered Mar. 15, 2018) (Chapter 32 Final Implementation Order). *See* James H. Cawley and Norman J. Kennard, *A Guide to Utility Ratemaking*, 157-60 (Public Utility Commission 2018).

²⁰ *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, Docket No. M-2018-2640802 (Tentative Implementation Order entered January 18, 2018), at 16 (footnote omitted); *See* also Chapter 32 Final Implementation Order entered March 15, 2018, at 27-28.

²¹ *Cf. Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm’n of West Va.*, 262 U.S. 679 (1923).

(4) Level of operating and other expenses in comparison to similarly situated utility enterprises.

(5) Level of financial performance needed to maintain or improve [PWSA's] bond rating thereby permitting [PWSA] to access the capital markets at the lowest reasonable costs to customers over time.

(6) [PWSA]'s management quality, efficiency and effectiveness.

(7) Service quality and reliability.

(8) Effect on universal service.

52 Pa. Code § 69.2703(a). *See, Pa. Pub. Util. Comm'n v. Pittsburgh Water & Sewer Auth.*, Docket No. R-2020-3017951 (Order entered Dec. 3, 2020). Additionally, the Commission must establish rates adequate to permit PWSA to satisfy its bond ordinance covenants. 52 Pa.Code § 69.2703(b).

Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. By definition, a “settlement” reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest.

When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the proposed terms and conditions are in the public interest. *Warner v. GTE N., Inc.*, Docket No. C-00902815 (Opinion and Order entered Apr. 1, 1996); (*Pa. Pub. Util. Comm'n. v. CS Water & Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991)). Thus, the focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters, but whether the public interest is served by the settlement. *Pa. Pub. Util. Comm'n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011).

In addition, in this case, the parties have reached what is referred to as a “black box” settlement where the settlement provides for an increase in the utility’s revenues but does not indicate the specifics of how the parties calculated the increase. The Commission has permitted “black box” settlements as a means of promoting settlements in contentious base rate proceedings. *Pa. Pub. Util. Comm’n v. Wellsboro Elec. Co.*, Docket No. R-2010-2172662 (Order entered Jan. 13, 2011). The Commission has observed that determining a utility’s revenue requirement is a calculation that involves many complex and interrelated adjustments affecting expenses, depreciation, rate base, taxes and the utility’s cost of capital. Reaching an agreement among the parties on each component can be difficult and impractical. As a result of this complexity, the Commission supports the use of “black box” settlements. *Pa. Pub. Util. Comm’n v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Opinion and Order entered Dec. 19, 2013).

Finally, a Commission decision must be supported by substantial evidence in the record. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

With all of the above legal standards in mind, the Joint Petition will be analyzed.

VII. DISCUSSION OF THE JOINT PETITION

Introduction

It is clear from the extensive litigation of this proceeding, the Joint Petition, and each of the Settling Parties’ Statements in Support of the Settlement, that the Parties worked diligently to craft a reasonable settlement that is in the public interest. Each Party was clear to point out in their Statements in Support that each provision of the Settlement was considered individually and within the context of the overall settlement package. Each Party also explicitly

explained that to achieve the Settlement, the Parties agreed to compromise on many issues in the interest of designing a complete Settlement that reasonably resolves all issues. All of the Settling Parties pointed out that, in particular and significantly, several of PWSA's initial proposals have been modified and/or withdrawn as part of the Settlement.

With these modifications, all the Parties urge the undersigned to recommend to the Commission that it approve the Settlement as submitted and without modification. All of the Joint Petitioners conclude that the Settlement resolves all the contested issues, fairly balances the interests of PWSA and its ratepayers, is consistent with the Public Utility Code, is just and reasonable and is in the public interest.

Of note, not every issue was of equal concern to every Party. Accordingly, each of the Joint Petitioners' submitted testimony and Statements in Support of the Settlement did not necessarily address each and every aspect of the Settlement.

For example, the City explained in its Statement in Support that it did not submit any responsive testimony in this proceeding and did not take a position on specific, individual issues. However, the City explained that it has evaluated the issues raised and participated in numerous settlement discussion with the other Parties. As a result, the City supports the Settlement, finding its terms and conditions reasonable and in the public interest. Accordingly, the City supports the Settlement as a whole because it is a reasonable compromise of the Parties' positions that addresses the key issue raised by the Parties, results in just and reasonable rates, and affords PWSA the opportunity to collect the necessary revenue to provide adequate, efficient, safe, and reasonable service and facilities. (City St. in Support, at 3-4). Therefore, in light of this explanation, the City's position in each issue will not be separately discussed below.

Additionally, the School District explained in its Statement in Support of the Settlement that its primary interest in this proceeding and in the Settlement relates to the stormwater charges. Thus, the School District took no position on any of the other issues, either in its submitted testimony or Statement. Therefore, the School's District position will be separately discussed below only as it relates to the Stormwater Charges Section of the Settlement.

With all the above in mind, I will turn and summarize the specific Settlement provisions, and various key positions of the Parties who addressed the provision at issue. However, the reader is referred to the Appendices H through N – the seven individual Statements in Support of the Settlement submitted by each of the seven Joint Petitioners - for their detailed analysis of their positions.

A. Revenue Requirements, Rates, and Charges

1. Rates

(i) PWSA

PWSA explains that the most critical drivers of its original filing were the continued increase in capital spending and the effects of inflation on the costs of operations. PWSA explained that its extensive Capital Improvement Plan (“CIP”) includes the refurbishment and replacement of a significant portion of PWSA’s water supply system in order to meet regulatory mandates. The other major drivers of the requested rate increases were PWSA’s need to drastically increase operations to address deferred maintenance; costs related to the Wet Weather consent Decree with the United States Environmental Protection Agency, environmental compliance, decreased consumption; and funds to meet new financial obligations and improve financial metrics. (PWSA St. No. 1, at 13-14, 17; PWSA St. in Support, at 7-8).

PWSA also explains that the MYRP was designed to assist the Authority in assuring that it had the revenues it needed to continue to modernize its water and wastewater systems and to continue to provide safe, adequate and reasonable service. The MYRP, explained PWSA, would have helped PWSA to cover projected rising costs and provided added certainty regarding rate levels for both the Authority and its customers. (PWSA St. in Support, at 7-8).

As to the two new surcharges, PWSA explained that: the CAC was proposed to permit PWSA to seek timely recovery of the costs of its voluntary assistance programs to support PWSA’s strong commitment to enroll as many eligible customers as possible; the IIC would have

expedited PWSA's ability to obtain additional low-cost funding through PennVest and WIFIA by having a stable revenue source to ensure the required debt covenant and additional bonds test can be met; and the DSIC increase would have permitted PWSA to spend \$5 million in qualifying construction expenditures, thereby expediting modernization of its water and wastewater systems. (*Id.* at 10).

The proposed Settlement would permit PWSA to increase water, wastewater and stormwater rates by a total of \$35,997,325, exclusive of any incremental amounts generated by application of the existing DSIC (with a 5% cap) to PWSA's revenues at proposed rates. As discussed further below, the Settlement also includes specific provisions related to the implementation of a newly renamed PennVest Charge ("PVC") in lieu of PWSA's proposed IIC. In addition, neither PWSA's proposed CAC nor its DSIC cap increase will be implemented.²² The revenue requirement settlement amount includes an authorization to amortize PWSA's deferred COVID-19 expenses (\$263,215) over two years.

From its prospective, PWSA submits that the proposed Settlement is in the public interest. First, the proposed rate increase reasonably balances the Authority's need for additional revenue over the next few years to continue to fund its massive CIP and its operating programs, while minimizing the ratepayers' increases. Second, the Settlement calls for a one-time base rate increase, as opposed to the multi-year base rate increase originally proposed.

PWSA also points out that notably, in addition to the base rate increase, PWSA will also be permitted to an increase incrementally the amount of DSIC-financed capital improvements (because the 5% cap will be applied to a higher level of revenues). Also, to the extent that PWSA is able to secure PennVest loans starting in 2025, it will be able to recover the debt service for those loans in the PennVest Charge, after applying to the Commission pursuant to 52 Pa. Code § 69.363.

²² In light of the agreement to not receive a multiyear rate increase, the Parties agreed that PWSA's proposal to eliminate usage included in its minimum charge would be withdrawn, to implement the software necessary to be able to make this change and to propose its elimination in the Authority's next base rate case. Joint Petition at ¶ 9.A.3.a.

In order to achieve a Settlement, PWSA explains that it elected to forgo its requests for: a multi-year rate increase (while also agreeing to a base rate case stay out for 2025); a CAC to recover the costs of providing low income programs; inclusion of WIFIA government loans in its permitted PennVest Charge; and an increase in its DSIC cap from 5% to 7.5%. PWSA explains that “[w]hile these concessions will create more difficulty for PWSA to recover the cost of maintaining the water/wastewater/stormwater system, PWSA believes that the Settlement allowances will be minimally adequate.” (PWSA St. in Support, at 17).

As to the allocation of revenue requirement among services and classes, PWSA points out that the Settlement adopts PWSA’s initially proposed allocations with only small revisions. PWSA explains that, in an effort to reach a mutually acceptable compromise, the Parties agreed to allocate the increase in a manner that attempted to reflect the positions of the various parties.²³ In PWSA’s view, the Settlement results in rates that are reasonable and reasonably related to their cost of service, as determined by PWSA’s Class Cost of Service Study (“CCOSS”); thus, they are not unreasonably discriminatory. (PWSA St. in Support, at 18-23).

As to its wholesale contracts, PWSA explains that it has a number of pre-existing wholesale agreements that were in place prior to being regulated by the Commission. While OCA recommended that PWSA terminate each of the wholesale agreements so that PWSA can negotiate new contracts that provide for movement towards costs of service rates, PWSA countered that the premature termination was unreasonable. Thus, in PWSA’s view, the Settlement, which provides that it would review its wholesale costs of service and rates when the contract renewals are negotiated between PWSA and the counter parties, is reasonable and in the public interest because it mitigates against potential litigation over contract termination. (PWSA St. in Support, at 18-23).

²³ The allocation of proposed settlement rate increases by customer class and by utility service is illustrated on Appendix B of the Joint Petition. A comparison of the customer bill impacts at existing rates, settlement proposed rates and initially filed rates is illustrated on Appendix C of the Joint Petition.

Further, PWSA agreed to amortize its \$263,215 COVID-19 expense claim over a two-year period, rather than its originally proposed single year, in response to concerns raised by I&E and OCA that these expenses are not recurring ones.

(ii) Other Parties

I&E and OCA

During litigation, both I&E and OCA strongly opposed PWSA's MYRP. In I&E's view, it is not prudent for PWSA to "try to play catch-up for years of neglect by proposing a multi-year rate plan that extends beyond the traditional fully projected future test year based on unsupported projections." (I&E St. in Support, at 8-9). Further, in I&E's view, PWSA would benefit from continued Commission oversight via regular base rate proceedings, especially considering its past mismanagement and ambitious capital improvement plan rather than losing the benefits of regular Commission review by implementing a MYRP. Additionally, I&E took issue with PWSA's accuracy in forecasting Operating and Maintenance ("O&M") and capital expenditures year after year. Therefore, "forecasting even further into the future is not reliable and certainty not recommended." (*Id.* at 9, citing I&E St. No. 1-SR, at 8).

Additionally, I&E recommended that the Commission reject PWSA's proposed PAYGO scheme and its proposed IIC. (I&E St. No. 1, at 20-26). Further, I&E called into question the accuracy of PWSA's capital improvement budget projections by analyzing the historical accuracy of PWSA's previous projections. (I&E St. No. 3, at 8-15, 19-22; I&E St. No. 3-SR, at 20-30). I&E found that PWSA has shown a consistent historical tendency to fall short of meeting its capital budget projections on an annual basis. I&E also noted PWSA's troubling unaccounted for water levels in 2021 and 2022. (I&E St. in Support, at 19-22, 30-31).

Finally, I&E made multiple adjustments to PWSA's proposed O&M expense claims noting that the data at the account level and expense category level showed large variances. I&E's O&M adjustments included adjustments to total payroll expense, payroll tax

expense, retirement benefits, operating contracts, drag bucket, line televising, office rent, legal expense, equipment expense, and COVID-19 expense. (I&E St. No. 2, at 5-6, 7-33; I&E St. No. 2-SR, at 3-5, 5-25).

I&E now submits that it fully supports the negotiated level of overall base rate revenue increase as compared to PWSA's original request. While the overall revenue requirement is a "black box" compromise, the overall revenue levels are within the levels advanced on the evidentiary record and reflect a full compromise of all revenue-related issues raised by the parties. Therefore, in consideration of the extensive testimony presented by all of the parties to this proceeding, I&E fully supports the negotiated level of overall base rate revenue increase as a full and fair compromise that provides PWSA, the Joint Petitioners, affected ratepayers, and the Commission with resolution of these issues, all of which is in the public interest. (I&E St. in Support, at 10-11).

OCA, like I&E, strongly opposed the MYRP during litigation. Similar to I&E, OCA was concerned about the accuracy of PWSA's multi-year rate predictions. OCA provided testimony to support its position that PWSA significantly over projected its capital improvement budget from 2019-2022, with the most recent example being a \$48 million over projection for 2022. Further, OCA's position was that since PWSA's MYRP revenue requirements were unsupported, the attendant DSIC cap increases, IIC, and CAC surcharges should also not be approved. Therefore, with the withdrawal of the MYRP, IIC, and CAC surcharges, as well as the DSIC cap at 5%, OCA supports the Settlement. (OCA St. in Support, at 2-3).

In its Statement in Support of the Settlement, OCA provided the following table that provides a breakdown of the Settlement revenue as compared to PWSA's filed rate requests:

Year	Revenue Requested	Settlement Revenue Excluding DSIC	% of Settlement Increase Excluding DSIC	Total Cost Savings Excluding DSIC
2024	\$46.8 million	\$35,997,325	77%	\$10.8 million
2025	\$45.4 million	\$0	\$0	\$45.4 million
2026	\$53.9 million	\$0	\$0	\$53.9 million
TOTAL	\$146.1 million	\$35,997,325	25%	\$110.1 million

OCA St. in Support, at 6.

Next, OCA notes that the Settlement revenue allocation between classes represents a compromise among the Parties who offered various allocation proposals, including OCA, OSBA, and I&E. In OCA’s view, the Settlement meets the standard that the “fairness” of a utility rate is generally considered to mean that the rate bears a reasonable relationship to the utility’s costs of serving the customer without exceeding the value of service to the customer. (*Id.* at 7).

Further, OCA finds it just and reasonable that PWSA has agreed that it will amortize its \$263,215 COVID-19 expenses over a two-year period, rather than the single year in PWSA’s initial filing since these expenses are not regularly occurring. Next, OCA is satisfied that the Settlement commits PWSA to engage in good faith negotiation in its attempt to renegotiate its current wholesale contracts upon each contract’s eligibility for renegotiation. This will ensure, in OCA’s view, that the significant under-recovery of costs from wholesale customers at the expense of all other customers is abated as soon as possible. (*Id.* at 12).

OSBA

During litigation, OSBA recommended reductions to a number of the Authority’s expenses and adjustments, and proposed charges for water service and wastewater customers. OSBA points out that the Authority’s proposed increase for Commercial water

services for 2024 was 30.0% and for wastewater service was 6.9%, inclusive of DSIC. The Settlement results in an increase of 19.7% in water rates for Commercial customers, a 12.6% increase in wastewater rates, and an approximate across-the-board increase of 26.5% in stormwater rates. In OSBA's view, its analysis that the resulting Settlement increase in which Commercial customers receive an increase that is 0.7% above the system average represents a compromise that is acceptable to OSBA for purposes of this case. (OSBA St. in Support, at 6-7).

Further, as to stormwater increase, OSBA notes that PWSA's commitment to establish a collaborative within 60 days following the entry of a final order to help Commercial customers implement stormwater controls may help mitigate the increase. (*Id.*)

Pittsburgh United

During litigation, Pittsburgh United's concern was that PWSA's proposed rates, if approved, would have resulted in a substantial increase in basic living expenses, falling especially hard on low income households who already struggle profoundly to make ends meet. However, on balance, Pittsburgh United supports the Settlement because the significant reduction in overall rate increase, along with critical enhancements of PWSA's low income assistance programs, discussed below in this decision, will help to mitigate the negative effects of the rate increase of PWSA's low income customers. (Pittsburgh United's St. in Support, at 4).

(iii) Disposition (Proof of Revenue)

For the reasons discussed more fully in Section VIII of this decision (Recommendation), I agree with the Joint Petitioners that the Settlement supports the negotiated level of overall base rate revenue increase as a full and fair compromise that provides PWSA, the Joint Petitioners, affected ratepayers, and the Commission with resolution of these issues, all of which is in the public interest. However, this portion of my decision concerns the Proof of Revenue submitted with the Settlement and, as a result, recommends that PWSA be required to file certain supporting calculations with its compliance filing.

When the Commission makes a final decision concerning a rate filing and permits or requires the adoption of rates other than the rates originally filed, as in the instant case, the public utility affected must file, within 20 days of the entry of the final order, a tariff revision consistent with the Commission's decision together with a proof of revenues and supporting calculations. 52 Pa. Code § 5.592(a). The utility shall simultaneously serve copies of the tariff revision, along with the proof of revenues and supporting calculations, on the parties in the proceeding. *Id.* In the instant case, if this Settlement is approved, the Commission would permit the adoption of rates other than the rates originally filed; therefore, PWSA must file with the Commission proofs of revenues and supporting calculations for each service type. (*Id.*)

To date, every PWSA rate case filed with the Commission has resulted in a settlement, and each settlement included proofs of revenues and supporting calculations proving revenues under present and proposed rates. *See* PWSA's 2021 Settlement, Appendix D at Dockets Nos. R-2021-3024773, R-2021-3024774, and R-2021-3024779; PWSA's 2020 Settlement, Appendix D at Dockets Nos. R-2020-3017951 and R-2020-3017970; and PWSA's 2018 Settlement, Appendix 3 at Dockets Nos. R-2018-3002645 and R-2018-3002647. However, the Settlement in the instant proceeding does not include similar proofs of revenues and supporting calculations.

Consequently, to ensure compliance with 52 Pa. Code § 5.592(a), I recommend that PWSA be directed to file, within 20 days of the entry of the final order in these proceedings, proofs of revenues and supporting calculations for water, wastewater, and stormwater services, respectively, detailing PWSA's authorized operating revenues under present and Settlement rates, broken down by base rate revenues, DSIC revenues, and other revenues.

2. Base Rate Case Stay Out

(i) PWSA

PWSA did not propose a base rate case stay out in its initial filing. Rather, PWSA proposed a three-year MYRP for rate increases in 2024, 2025, and 2026. However, PWSA points

out that during litigation, no party supported the MYRP. In the Settlement, PWSA agrees not to file a general rate increase any sooner than January 1, 2025, for rate implementation in 2026.

PWSA explains that it concluded the stay out is in the public interest since it will allow PWSA to focus staff resources on the other settlement commitments. Further, PWSA points to other Settlement provisions which addresses PWSA's cost driver and, therefore, the ability to seek recovery of charges starting in 2025, such as the PennVest charge on January 1, 2025. PWSA also acknowledges that the Settlement does not take away any of PWSA's other available options to the extent it determines it must pursue extraordinary or emergency rate relief sooner than 2026 due to unforeseen events. Thus, when PWSA views the Settlement as a whole, it concludes that the stay out is in the public interest. (PWSA St. in Support, at 25-26).

(ii) Other parties

I&E and OCA

I&E explains that it did not present testimony regarding a stay out, nor did I&E suggest the stay out proposal as an option. Rather, the stay out was offered by other interested parties during extensive settlement negotiations as part of PWSA's overall revenue requirement plan going forward. Nonetheless, I&E explains that it supports this provision as in the public interest, especially since it shares the concerns of the other interested Joint Petitioners in rejecting the MYRP, and this provision is a reasonable compromise of the overall revenue requirement. (I&E St. in Support, at 11-12).

In OCA's view, this provision is in the public interest as it provides stability for PWSA's charges and certainty to ratepayers who will experience rate continuity while the stay out is in effect and while they transition to increased rates while ensuring rate stability. OCA avers that the base rate stay out is an important term because the evidentiary record demonstrates that PWSA may experience significant operational changes in 2025, including that it anticipates first-time ownership of the system assets it now operates as of January 2025 and that its Cooperation Agreement with the City of Pittsburgh may be amended or terminated after January

1, 2025. (OCA St. 2, at 17). Further, during litigation, OCA’s position was that because any rates proposed prior to 2025 could not capture the currently unidentifiable and unquantifiable rate consequences of these two potentially material changes, permitting PWSA to propose rates prior to 2025 would deprive the Commission of the information necessary to fulfill its duty of ensuring that PWSA’s rates were just and reasonable. (OCA St. in Support, at 13).

OSBA and Pittsburgh United

Neither OSBA nor Pittsburgh United took a formal position related to this provision. However, Pittsburgh United explains that while limited in duration, this stay out provision helps to shield against further increases in rates for approximately two years. (Pittsburgh United St. in Support, at 5). Further, similar to all the other Parties, OSBA found this provision a reasonable compromise of the overall revenue requirement, and supports its inclusion in the Settlement. (OSBA St. in Support, at 7-8).

3. Rate Design and Charges

a. Minimum Charge – Removal of Minimum Allowance

(i) PWSA

As explained by PWSA witness Ms. Julie Mechling, most residential customers are billed a minimum charge for up to 1,000 gallons and for every full 1,000 gallons over the minimum, they are assessed a consumption charge. PWSA explained that, although the use of a minimum allowance has been a feature of PWSA’s historical rate structure, since early on in PWSA’s transition to the Commission’s jurisdiction, various stakeholders have advocated that PWSA eliminate the minimum allowance. Consistent with PWSA’s prior rate case settlement, PWSA proposed a two-year phase-out of the current minimum allowance. PWSA proposed that the first year, 2024, would be needed to implement the extensive requirements in support of the new rate structure without a minimum allowance. PWSA proposed that the removal of the minimum allowance would occur starting in 2025.

In support of the approach, Ms. Mechling explained that implementing the change within ten business days after Commission approval was not feasible nor would it be prudent for PWSA to undertake the necessary staffing time and resources necessary to make the rate structure change prior to receiving Commission approval. (PWSA St. No. 6, at 25-26). Thus, the removal of the minimum allowance was part of a larger rate proposal which included a MYRP to provide rate stability over the next three years to permit, in part, PWSA to implement its proposal to remove the minimum allowance. In discovery, PWSA produced a customer bill impact analysis of the rate structure change which showed that even if no other changes were made, the implementation of the rate structure change would have resulted in rate changes, and thus varied customer bill impacts, as revenue previously recovered through the fixed minimum charges would have needed to be shifted to the volumetric charges.

Although, as discussed previously, I&E and OCA strongly opposed PWSA's request for a MYRP, they did support its proposal to remove the minimum allowance from its current rate structure with a January 1, 2025, implementation date. (OCA St. No. 2, at 13-14, 19; I&E St. No. 3, at 32). In the Settlement, the Parties agreed to delay the elimination of the minimum charge and instead agreed that: 1) PWSA will undertake the software and billing system changes necessary to be able to implement a rate structure change to remove the minimum allowance; 2) as part of its next base rate filing, PWSA will propose to remove the minimum allowance with the then-proposed rate effective date and will include a customer bill impact analysis that illustrates the effect on customer rates of the rate structure change; and 3) in its next rate case, PWSA will include a customer cost analysis and rate proposals that fully eliminate usage allowances. (Joint Petition at ¶ 9.A.3.a).

PWSA explains that the Settlement is a reasonable resolution of this issue. In PWSA's view, although the Settlement includes an agreement for a base rate case stay out, requiring PWSA to implement a rate structure change during this stay out and to adjust the base rates of customers due to the change is not reasonable or practical. Moreover, PWSA points to the record as showing that any implementation of the rate structure change needs to be considered alongside the impacts of the structure of PWSA's low income customer assistance programs. As

such PWSA argues that these settlement terms should be adopted as presented without modification. (PWSA St. in Support, at 26-29).

(ii) Other parties

I&E

I&E submitted testimony regarding PWSA’s minimum usage allowance, its class cost of service analysis practices, and its proposal to eventually switch to a base customer charge. (I&E St. No. 3, at 24-32; I&E St. No. 3-SR, at 31-36). I&E noted that PWSA acknowledged that issues had been raised regarding PWSA’s cost of service practices and its use of a minimum allowance in past base rate cases. I&E explained that it ultimately recommended that “PWSA delay its proposal to switch from a minimum charge to a base charge until PWSA and the statutory advocates are reasonably certain that PWSA can accurately determine a data-supported cost based customer charge.” (I&E St. in Support, at 12-13).

OCA

In OCA’s view, this provision is another important component of the overall Settlement. OCA pointed out that, although OCA agreed with PWSA’s position to eliminate the minimum allowance from its fixed monthly customer charges because it is inequitable and it disincentivizes conservation efforts, OCA disagreed that PWSA should condition the removal on approval of the MYRP and the IIC and CAC proposals. (OCA St. 3, at 13). OCA argues that the minimum usage allowance is also inconsistent with Commission practice, and pointed to page 151 of *A Guide to Utility Ratemaking*: “the Commission’s policy is to require the installation of meters and set usage rates to encourage conservation.” *A Guide to Utility Ratemaking* (citing 52 Pa. Code § 65.7 (Metered Service)); *see also* 52 Pa. Code § 65.20(6) (Water Conservation Measures). In this case, PWSA proposed to eliminate the minimum allowance but not until 2025, making the elimination contingent upon approval of PWSA’s MYRP (PWSA St. 2, at 50-51). As discussed above, OCA strongly rejected the MYRP.

Next, OCA also examined each of PWSA's three jurisdictional rate proceedings prior to this case (2018, 2020, and 2021) and pointed out that PWSA, although previously agreeing multiple times to develop a plan to remove the minimum allowances, such removal has not occurred yet. (OCA St. in Support, at 13-16). Nonetheless, in OCA's view, although the Settlement will not require PWSA to implement removal of the minimum allowance by January 1, 2025, "it is a reasonable resolution because it prescribes a timing obligation, the proposed rate effective date of PWSA's next base rate case, for PWSA to propose removal. Additionally, PWSA can take steps now to ensure that its software and billing systems are not obstacles to removing the minimum charge so any such hurdles should not exist as a barrier to removal of the minimum charge." (*Id.* at 15). Finally, OCA submits that the elimination of the minimum usage allowance is in the public interest because it more fairly allocates the rates to those customers that use greater amounts, and provides an important price signal to customers to incentivize conservation efforts. (*Id.*)

Pittsburgh United

Pittsburgh United supports eliminating the minimum charge on customer billing. However, it was concerned that elimination of the minimum charge would significantly and adversely impact the Bill Discount Program ("BDP") as currently designed, as the discount levels are heavily tied to the minimum charge. Therefore, Pittsburgh United asserted that its support for elimination of the minimum charge was contingent on PWSA restructuring the BDP to provide meaningful discounts for low income customers.

Pittsburgh United asserts that the provisions contained at Paragraph 9.A.3.a. of the Settlement represents important compromises between Settling parties. While not providing for immediate elimination of PWSA's minimum charge, these provisions will ensure that PWSA proposes to eliminate its minimum charge in its next base rate case. Further, in Pittsburgh United's view, by requiring that PWSA provide a customer costs analysis and rate proposal accounting for elimination of the minimum charge, the proposed Settlement helps provide important information needed to evaluate the effects and appropriateness of PWSA's proposal to

eliminate its minimum charge in its next rate proceeding and, in turn, to “shield against potential unjust and unreasonable rate impacts.” (Pittsburgh United St. in Support, at 7).

OSBA

OSBA did not address this issue.

b. PennVest Charge

(i) PWSA

In its initial filing, PWSA sought authority to implement a new IIC charge to timely recover principal and interest obligations due by PWSA for loans received from the Pennsylvania Infrastructure Investment Authority and the federal government loan program known as the Water Infrastructure Finance and Innovation Act (“WIFIA”) between base rate case filings. (PWSA St. No. 6, at 27-28). Both I&E and OCA opposed implementation of the IIC.

As part of the Settlement, the parties agree to support PWSA’s implementation of the newly renamed “PennVest Charge” (or “PVC”) in lieu of the initially proposed IIC. Per the terms of the Settlement, the PVC will initially be set to \$0 and PWSA will utilize 2024 to implement the software and billing system changes necessary to implement the PVC. PWSA agreed not to seek recovery for the WIFIA loans. The Settlement also includes provisions to align with 52 Pa. Code §§69.361-69.364, including the requirement that the PVC be displayed as a separate line item on customer bills. (Joint Petition ¶ 9.A.3.b).

PWSA asserts that this is reasonable for several reasons. First, the PVC is redesigned to address the issues raised by OCA and I&E, including the requirement to display it as a separate charge on customer bills and the removal of the WIFIA loans. Second, the PVC is structured to be set at \$0 effective February 15, 2024, with the ability of PWSA to seek cost recovery for qualifying loans closed on or after January 1, 2025. This addresses the programming and implementation concerns of PWSA. Third, permitting PWSA to seek cost recovery through

the PVC effective January 1, 2025, is a reasonable compromise giving PWSA the opportunity to address one known cost driver in 2025 which allowed PWSA to agree to withdraw its request for a MYRP and agree to a base rate case stay out. Finally, the Settlement provisions and supporting tariff language provide clarity about the mechanics of the PVC so that it can be ready to be used when loans become eligible. For all these reasons, the Settlement provisions regarding implementation of the PVC are an integral part of the overall Settlement, reasonably resolve a number of interrelated issues and should be approved as reasonable without modification. (PWSA St. in Support, at 31-32).

(ii) Other parties

I&E

I&E submitted extensive testimony regarding PWSA's PennVest loan portfolio as well as PWSA's PAYGO and IIC proposals. (*See, e.g., I&E St. No. 1, at 20-26*). I&E noted PWSA's success in securing the low-cost PennVest loans and noted the transparency that flows from the requirement that the PennVest loan be placed on customer bills as a separate line item. (*Id., at 22-26, citing 52 Pa. Code § 69.363*). I&E argued that the transparent PennVest loans are preferable to PWSA's proposed PAYGO scheme and the less than transparent proposed IIC. (*Id. at 20-26*).

Therefore, I&E supports the Settlement terms regarding the PennVest loans as a full and fair compromise that provides PWSA, the Joint Petitioners, affected ratepayers, and the Commission with regulatory certainty and resolution of the PennVest, PAYGO and IIC issues, all of which is in the public interest. (I&E St. in Support, at 13-14).

OCA

OCA submits that the PennVest Charge presents a reasonable resolution of PWSA and OCA's litigation positions regarding the IIC. OCA points out that PWSA has attained "an unprecedented amount of PENNVEST funding with over \$610.8 million in low-interest loans and

\$35.7 million in grants from PENNVEST in 2018, and it anticipates consistent future applications.” (OCA St. in Support, at 17, citing to PWSA St. 2, at 33). It is within the confines of PWSA’s “unique circumstances that OCA is willing to support the PENNVEST Charge.” (OCA St. in Support at 17).

OCA points out that it is important that the Settlement provides certain guardrails including that PWSA will provide the notice of its intent to recover qualified PennVest loans and it will display the PennVest Charge as a separate line item on customer bills. Therefore, OCA has accepted the PennVest Charge as a reasonable and narrowly-tailored mechanism for PWSA’s recovery of debt service costs of PennVest loans within the confines of the Settlement. Furthermore, the Settlement will benefit ratepayers by ensuring that PWSA’s recovery of PennVest loans is limited in scope to preclude unwarranted recovery. (OCA St. in Support, at 29).

OSBA and Pittsburgh United

OSBA did not specifically address this issue, and Pittsburgh United did not take a formal position during litigation.

(iii) Disposition (Supporting Calculations)

For the reasons discussed more fully in Section VIII of this decision (Recommendation), I agree with the Joint Petitioners that implementing the newly renamed PennVest Charge in lieu of the initially proposed IIC by PWSA, is a full and fair compromise that provides PWSA, the Joint Petitioners, affected ratepayers, and the Commission with resolution of these issues, all of which is in the public interest. However, this portion of my decision concerns the filing of certain supporting calculations with PWSA’s compliance filing.

PWSA’s IIC and PVC calculation methodology was more precisely identified in PWSA Exhibits HJS-22W-R and HJS-21-WW-R. According to these exhibits, under the PVC formula, the value used for the “Consumption” component equals total consumption for customer

classes excluding wholesale and public fire protection, and the value used for the “Conveyance” component equals total consumption for customer classes excluding wholesale. However, PWSA’s Settlement tariff does not specify PVC exemptions for the wholesale customer class.

In a recent tariff supplement filing by Columbia Water Company involving its PennVest Surcharge at Docket No. R-2020-3022302, the Commission noted that Columbia Water’s practice of exempting private fire protection customers from its PennVest Surcharge appeared to conflict with its effective water tariff, which specified that the surcharge would be uniformly applied to all classes of customers except public fire protection. Similarly, in this instance, PWSA’s exemption of wholesale customers from its PVC appears to conflict with the Settlement tariff. Therefore, similar to the circumstances present in Columbia Water, in the instant case, the Commission should direct PWSA to file a revised tariff supplement to address this issue.

Additionally, according to PWSA’s Exhibits HJS-17W-R and HJS-16WW-R, PWSA projected approximately 335 unmetered customers (4,020 unmetered monthly bills / 12 months = 335 customers) that would be served under its proposed rates. However, since the PVC is charged as a rate per 1,000 gallons, it does not appear that the PVC would result in unmetered water and wastewater customers being charged a reasonable portion of the cost of PVC-funded facilities. At the same time, it may be reasonable to permit the Settlement tariff to take effect and require that these issues be addressed with PWSA’s next tariff supplement filing to revise the PVC. Until that time, PWSA’s PVC will remain at \$0.

Therefore, I make the following recommendations. First, I recommend that the Commission should direct that any tariff or tariff supplement filing to incorporate a PennVest loan into PWSA’s PVC must be filed with the Commission upon at least sixty (60) days’ notice. This would provide the Commission and interested parties with a reasonable opportunity to review and contest the revenue requirement, cost allocation, and rate design impacts of the proposed inclusion of a loan into PWSA’s PVC and PWSA’s satisfaction of applicable requirements.

Second, I recommend that the Commission direct that prior to or in conjunction with PWSA's first tariff or tariff supplement filing to incorporate a PennVest loan into PWSA's PVC, PWSA shall revise its PVC to: (1) either explicitly exempt wholesale customers from PWSA's PVC, or recalculate PWSA's PVC by incorporating wholesale customers into PVC calculations; and (2) propose any rate changes necessary to modify the PVC formula definitions for "Consumption" and "Conveyance" to include estimated consumption for unmetered customers and to impose flat rate charges and credits for unmetered customers based on estimated consumption.

Finally, the Commission should require PWSA to file the following supporting information with the Commission with any tariff supplement filing to incorporate a PennVest loan into PWSA's PVC:

1. Final and red-lined copies of the proposed tariff or tariff supplement to incorporate the loan into the PVC.
2. A summary of the terms of the loan, including the loan date, amount, interest rates, term of loan, annual principal and interest payments, and security certificate docket number. The date of each expected interest rate or annual principal and interest payment change must be identified for each loan.
3. Copies of executed loan agreement documents and final amortization schedules.
4. A statement that the project funded by the loan is used and useful.
5. A copy of a proof of revenues and supporting calculations for the affected type of service reflecting PVC revenues under present and proposed rates.
6. Copies of any supporting documentation used to determine the PVC, including electronic working papers.
7. A copy of PWSA's customer notice that it issued in accordance with the Settlement's Paragraph 9.A.3.b.ii.(a) and 52 Pa. Code § 53.45(g).
8. A copy of PWSA's affidavit of customer notice confirming that notice requirements have been met in accordance with 52 Pa. Code § 53.45(h).

9. A copy of a signed verification statement for the information being provided in accordance with 52 Pa. Code § 1.38.

Upon review of the supporting data submitted by PWSA, the Commission or its designee should, within thirty (30) days of its submission, notify the utility, by Secretarial Letter, of any deficiency in the submission. Upon notice of a deficiency in the supporting data as filed, the utility should rectify any deficiencies within ten (10) business days. A tariff or tariff supplement not accompanied by required data or otherwise deemed deficient should be rejected unless the Commission, by order and for good cause shown, allows the tariff or tariff supplement to be filed.

Once a PennVest loan is incorporated into PWSA's tariff, semi-annual adjustments and annual reconciliation filings related to that loan should be reviewed by the Commission or its designee. To address future PVC filings, the Commission should designate the Bureau of Technical Utility Services to review tariff supplement filings to incorporate PennVest loans into PWSA's PVC for analysis and a recommended Order. For all subsequent Section 1307 rate change requests, including semi-annual adjustments and annual reconciliation filings for loans included in PWSA's PVC, the Commission should designate the Bureau of Audits as being responsible for review and appropriate action.

c. Customer Assistance Charge (Withdrawn by PWSA)

As part of the Settlement, PWSA has withdrawn its request to implement the CAC, and the withdrawal is consistent with I&E and OCA's recommendation that the CAC should not be approved. By way of context, PWSA proposed the CAC because it claimed that the administration of customer assistance programs has become increasingly expensive. (PWSA St. in Support, at 32).

Both I&E and OCA were unpersuaded by PWSA's position that increasing costs of its low income customer assistance programs was a reason to implement a CAC versus projecting the costs as part of PWSA's rates. Additionally, I&E took the view that combining the charge on the customer's bill would not create greater transparency, as claimed by PWSA, and

that reconciling the CAC outside the parameters of a base rate case would hamper the Commission's review of the costs. (I&E St. No. 2 at 34-35). Further, OCA took the view that the nature of the costs was not appropriate for a reconcilable charge and the Commission had recently rejected Aqua Pennsylvania's proposal to implement a universal service rider. (OCA St. No. 2, at 34-35; OCA St. in Support, at 22, citing *Pa. Pub. Util. Comm'n v. Aqua Pa, Inc.*, Docket No. R-2021-3027385 (Opinion and Order entered May 16, 2022)).

Pittsburgh United did not take a specific position related to the proposed CAC, but favored funding for PWSA's Hardship Fund, in addition to the BDP, discussed more below. (Pittsburgh United St. in Support, at 7). OSBA recommended that all costs should be recovered solely by the residential class, but since both the CAC and IIC were withdrawn as part of the Settlement, this thereby reduces the increased burden of recovery of CAP costs from non-residential customers. (OSBA St. in Support, at 7).

Thus, all parties concluded that the withdrawal of the CAC proposal is a reasonable resolution of this proceeding and is in the public interest. PWSA further argues, *inter alia*, that PWSA has taken the costs of low income programs into consideration as part of the overall revenue recovery contemplated by this Settlement. (PWSA St. in Support, at 34).

d. Readiness-to-Serve Component

In the Settlement, the Joint Petitioners agree that in its next filed base rate case, PWSA will remove its readiness-to-serve ("RTS") component from its monthly water and wastewater conveyance customer charges. All parties reserve the right to challenge any component of the customer charge in future base rate proceedings. PWSA explained that the purpose of the RTS component is to capture the costs of having a system in place to provide water to the customer regardless of whether the customer consumes any water in a given service period. (PWSA St. in Support, at 35). As explained by PWSA witness Harold J. Smith, the minimum charge component of PWSA's rates includes a RTS adjustment such that 10.0% of PWSA's water and wastewater conveyance debt service is recovered. A portion of the RTS costs is also recovered through the fire system charge. (PWSA St. No. 7, at 29, 30-32, and 43).

I&E and OCA both opposed the inclusion of the RTS component in PWSA's rates. Both objected to the inclusion on the basis that other Pennsylvania utilities do not include such a component when calculating their fixed monthly charges. (I&E St. No. 3, at 30; OCA St. No. 3, at 14-15). In addition, OCA took the position that there was no basis to allocate a portion of PWSA's debt service costs through the RTS component. (OCA St. No. 3, at 15).

Although Pittsburgh United did not take a position in this proceeding related to the RTS issues of the proposed Settlement, it stated, "[n]evertheless, we assert that these terms are just and reasonable, as they allow critical opportunity for parties to evaluate the appropriateness of a [R]eadiness-to-[S]erve component on monthly water and wastewater conveyance customer charges, and the effect that these adjustments may have on the rates borne by residential and BDP customers." (Pittsburgh United St. in Support, at 8).

OSBA did not take a position on this issue.

B. Third Party Collection Agency

During the pendency of this case, PWSA issued a request for proposal ("RFP") for a third-party debt collector for certain of its unpaid receivables and provided updates in its testimony. (PWSA St. No. 6. at 15; PWSA St. 6R, at 19-20). PWSA witness Ms. Mechling testified that the goal of partnering with a collection agency was to increase PWSA's monthly collection by 10%. (PWSA St. No. 6, at 15).

OCA opposed PWSA's decision to hire a third-party debt collection agency. OCA raised concerns about the use of a collection agency in the context of ensuring Chapter 56 rights are preserved and its ability to implement a 10% increase in monthly collections. (OCA St. in Support, at 23-24). I&E presented no testimony on this issue but shared the concerns of the interested Joint Petitioners. (I&E St. in Support, at 16). For similar reasons, Pittsburgh United also shared concerns of a third-party debt collector. OSBA did not take a position on this issue.

However, all the parties support the proposed Settlement terms because PWSA agreed to include in its training of any debt collection agency with which it enters into a contract the requirement to warm transfer to PWSA any individuals seeking to re-establish service. (Joint Petition ¶ 9.B.1). In support of this agreement, PWSA agreed in the Settlement to require the collection agency to affirmatively ask whether an individual wishes to seek service restoration. (Joint Petition ¶ 9.B.1.a). PWSA also agreed as part of the Settlement to track and report in the next base rate case data from the collection agency, including how many warm transfers were made and what happened with those customers. (Joint Petition ¶ 9.B.1.b).

Thus, OCA explained that, although the Settlement does not prevent PWSA from hiring a collection agency, the fact that the Settlement includes guardrails intended to protect consumers from unscrupulous collection practices is of significant import. (OCA St. in Support, at 23). Further, Pittsburgh United points out that the use of a third party collection agency will not abrogate the ability of consumers to access a restoration payment arrangement consistent with the requirements of Chapter 14 of the Public Utility Code. Finally, the Joint Petitioners also explain that the public interest is served since the Settlement will require PWSA to track data necessary to gauge the customer impact.

C. Stormwater

1. Introduction

(i) Pending appellate case

First, as pointed out by several of the Parties throughout this litigation, there is a case pending before the Supreme Court of Pennsylvania that may have some future bearing on PWSA's ability to include a stormwater fee in its tariff rates. The Pennsylvania Commonwealth Court ruled in January 2023 that a stormwater charge, created and charged to the University by the Borough of West Chester ("Borough") constituted a local tax and not a fee or special assessment. *Borough of West Chester v. Pa. State Sys. of Higher Educ.*, 291 A.3d 455 (Pa. Cmwlth. 2023), *appeal filed* Feb. 1, 2023, docketed at 9 MAP 2023 (Pa. 2023) ("*West Chester*").

Therefore, as a tax-exempt entity, West Chester University was exempt from the Borough's stormwater fees.²⁴

However, this decision does not need to address or resolve the application of the above Commonwealth Court case, raised by the School District, in light of the Settlement's waiver provision. As the School District acknowledged in entering into the Settlement, it was not pursuing this line of litigation in the instant proceeding:

It is important to note, however, that the benefits reflected in the stormwater-related provisions of the Settlement come with the clear understanding and recognition by the School District that it is forgoing at the present time and under the circumstances described in detail in the Joint Petition, its litigation position that PWSA's stormwater fee is unlawful since those services should be paid by all community residents as a tax, certain other claims regarding the use of impervious surface exclusively to calculate ERUs and other rate design and rate allocation issues raised in the litigation. But as is the case with all settlements, the School District has carefully evaluated the benefits and costs of the Settlement relating to stormwater and has concluded that it is in its and in the public interest to support the stormwater-related provisions of the Settlement for the reasons noted herein.

School District St. in Support, at 8-9.

²⁴ The Commonwealth Court discussed in detail the difference between a tax, which is imposed upon all residents of the Borough and is spent for the benefit of the entire community, and a fee that is paid to a public agency for a benefit which is not shared by the general members of the community and is paid by choice. Despite the Commonwealth Court's holding that West Chester's stormwater charge constitutes a tax, the decision does not hold that all stormwater fees are taxes. The particular facts pertaining to West Chester's Stormwater Ordinance, the testimony, and the factual record developed in the proceeding tipped the scale towards West Chester's stormwater charge constituting a tax rather than a fee.

According to the docket entries on the website of the Administrative Office of Pennsylvania Courts, by Order filed on October 31, 2023, the Supreme Court granted the Appellees request for a further extension to file a Brief. (*See*, docket sheet available at <https://ujspportal.pacourts.us> (last visited 11/7/2023)).

(ii) RDC's Statement

Second, RDC intervened in this proceeding for the sole purpose of challenging PWSA's stormwater fees. (*See*, Corrected Petition to Intervene in the Stormwater Proceeding by RDC).²⁵ However, as explained above, RDC did not move for the admission of any pre-served testimony nor participate in the evidentiary hearing held on October 4, 2023. Rather, after the Settlement was filed, and after the deadline for filing Reply Briefs or Joint Petition, I received two emails from Attorney McAbee on behalf of RDC. The 11/1/2023 email, which copied only my legal assistant and none of the other Parties stated, "We [RDC] will not stand in the way of the settlement, but we cannot support it." As previously described above, attached to this email were three documents – including one eight-page Statement "reflecting concern" of the Settlement's stormwater provisions; one document consisting of Exhibits 1-5; and a Certificate of Service stating that said Statement "not supporting the settlement" was served on the parties of record.²⁶ While the Certificate of Service was filed by RDC, the Statement and Exhibits were not.

Next, the 11/9/2023, email I received²⁷ from Attorney McAbee copied only counsel for PWSA, attorneys Deanne M. O'Dell and Karen Moury; not the other Joint Petitioners. In this email, Attorney McAbee stated that she did not receive the Settlement Consumer Letter which she believed was sent to the *pro se* Complainants explaining their opportunity to file comments or responses, if any, by November 9, 2023. Next, Attorney McAbee stated in this email, "if our [RDC's] understanding is not correct then we withdraw our [S]tatement. If our understanding is correct then we want our [S]tatement entered as our response with respect to our Formal complaint."

²⁵ PWSA also notes that RDC has a Formal Complaint pending at Docket No. C-2023-3039163 disputing the stormwater fees already imposed by PWSA on it, which is currently pending before Deputy Chief Administrative Law Judge Mark A. Hoyer. (*See* PWSA St. in Support, at 43). This Complaint was filed on March 17, 2023, prior to the instant proceeding, and is not consolidated herein.

²⁶ I note that RDC's "Statement" was dated October 30, 2023, but the certificate of service is dated the day before — i.e., on October 29, 2023. As stated above, I was emailed the aforesaid on November 1, 2023.

²⁷ *See* n.15 herein for the date of the receipt of this email.

In the interests of transparency and to avoid any *ex parte* communication, or the appearance thereof, I forwarded both the 11/1/2023 and 11/9/2023 emails I received from Attorney McAbee to all the Parties, copying Attorney McAbee. I also indicated in my email that I was making no comment or taking any action at that time regarding Attorney McAbee's emails or request.

I now address RDC's emails and request in this decision. However, as discussed below, because I will not admit or consider RDC's Statement as part of the evidentiary record, in the interests of transparency and for the sole purpose of facilitating direct review by the Commission and/or an appellate court should there be an exception or appeal filed by RDC, I have downloaded RDC's 11/1/2023, and 11/9/2023 emails, and RDC's Statement and Exhibits, and forwarded them to the Commission's Secretary's Bureau, to be docketed for this purpose only.

Next, I will not admit into the evidentiary record of this case, and hence, not consider, RDC's Statement "objecting" to the Settlement for several reasons. First, RDC now seeks to have admitted, without properly moving for its admission at the evidentiary hearing, a shortened version of its pre-served testimony. This Statement takes RDC's two pre-served statements and seven exhibits and condenses them to one Statement with five of the same seven exhibits submitted with its pre-served testimony. The "evidence" in both is the same. Further, RDC has proffered no explanation as to why it did not appear at the October 4, 2023, evidentiary hearing to properly move for its admission, or otherwise formally move for its admission. RDC cannot now circumvent the failure of its obligation to appear at the evidentiary hearing and present evidence, with this email request to now admit its evidence.²⁸

²⁸ See, 66 Pa.C.S. § 332(f) (providing that "[a]ny party who shall fail to be represented at a scheduled . . . hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such . . . hearing, and shall not be permitted thereafter to reopen the disposition of the matter accomplished thereat, or to recall for further examination of witnesses . . . unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening."). See also, 52 Pa. Code § 5.245(a).

Second, and fundamentally, I cannot on this record view RDC's Statement as objecting to or not opposing the Settlement. Rather, RDC wants to have it both ways – it does not want to object to the Settlement, but nonetheless wants the Commission to “consider” its Statement of non-support and modify it. The Settlement indicates that the Joint Petitioners were authorized to represent that RDC did not object to the Settlement, which RDC does not dispute. Yet, RDC now claims it cannot support it and proposes modifications to the Settlement. This position is not consistent with non-opposition.

For example, the 11/1/2023 email states that RDC “will not stand in the way of the [S]ettlement, but we cannot support it.” Further, the “Statement” states on p. 3 that “RDC is acknowledging to the . . . ALJ and the . . . PUC it is not opposing the [S]ettlement but strongly believes the following[.]” RDC then argues that the Settlement is not in the public interest and suggests ways the Settlement should be modified.

Third, if RDC wanted the Commission to consider its reasons that the Settlement is not in the public interest and request that the Commission make modifications to it, then it should not have agreed to not oppose the Settlement. RDC should have filed either a brief or Statement opposing the Settlement and requesting the Commission modify it, by the applicable deadline provided in the Scheduling Order. The Commission's policy permits parties to enter “partial” or “non-unanimous” settlements. “A partial settlement is a comprehensive resolution of all issues in which less than all interested parties have joined.” 66 Pa.C.S. § 69.401. RDC failed to do so.

Fourth, RDC's 11/9/2023, email requests that RDC be treated, in effect, as a *pro se* consumer Complainant. In this email, after noting that RDC did not receive the Settlement Consumer Letter which was sent to the *pro se* Complainants explaining their opportunity to file comments or responses, if any, by November 9, 2023, RDC stated, “we want our [S]tatment entered as our response with respect to our Formal complaint.”

Initially, I note that RDC did not file a Formal Complaint in this proceeding, as indicated in RDC's email, but proceeded as an active Intervenor. RDC is not a *pro se* consumer complainant, but is represented by a licensed Pennsylvania attorney and as such, RDC was

afforded all the rights, duties, privileges, and obligations as a represented Intervenor-Corporation. For example, after being granted intervention in this proceeding by Order dated July 28, 2023, counsel for RDC participated in the public input hearings on August 29, 2023, during which it cross-examined several witnesses; it participated in further pre-hearing conferences; it had an opportunity to participate in discovery; it received and submitted pre-served testimony; it was consulted with as to its position to the proposed Settlement; and it signed the Protective Order and therefore may have been privy to confidential information as an attorney of record during litigation.

Therefore, I cannot conclude that RDC should now be afforded the benefit of liberal construction of the Public Utility Code and Commission rules, which are often afforded to *pro se* complainants, who may be unlearned in the law when confronted with procedural rules. *See, e.g., Carlock v. The United Tel. Co. of Pa*, Docket No. F-00163617 (Opinion and Order entered July 14, 1993).

Finally, I will not consider the Statement as part of the evidentiary record for due process and fairness concerns. RDC was given a full and fair opportunity to participate in this proceeding as a Corporation-Intervenor, duly represented by licensed Pennsylvania counsel. As a corporation required to be represented by counsel, RDC should be held to all the professional responsibilities and capacity of a represented corporation.²⁹ Further, the Joint Petitioners and the Commission should, in the interests of fairness and due process, be able to rely upon representations made to them by another attorney in preparation of the Settlement. RDC does not dispute it represented to the other Joint Petitioners that it does not oppose the Settlement.

²⁹ *See*, the 7/28/2023 Order which granted RDC's Corrected Petition to Intervene, at 5 wherein it is stated that Attorney McAbee will be held to all the professional responsibilities in her capacity as attorney of record and her representation of RDC. As described above, this Order was precipitated by a dialogue with Attorney McAbee that RDC could not be represented by a "*pro se* attorney." At that time, we discussed Attorney McAbee's and RDC's options to proceed and Attorney McAbee specifically stated she would proceed as counsel for RDC.

Therefore, RDC cannot accomplish by email what it should have done during litigation. It cannot both represent it does not oppose the Settlement, and oppose it and make recommendations to modify it now via emailing documents to the undersigned. Further, RDC cannot now circumvent the failure to appear at the evidentiary hearing and present evidence, with this email request to now admit its evidence.

Consequently, this decision does not address the merits of RDC's emailed documents.

(iii) Parties other than School District

Third, both I&E and OCA supported PWSA's approach to stormwater management, the stormwater rate structure and the recovery of costs. Also, neither I&E nor OCA challenged the use of the impervious surface area for the calculation of stormwater fees, the tiered approach for residential customers or the stormwater credits that PWSA has offered. (I&E St. No. 3, at 3-4; OCA St. 3, at 21-22). Pittsburgh United raised concerns regarding providing additional ways for low income customers to adopt green stormwater mitigation, which will be discussed below. (Pittsburgh United St. 1, at 45). OSBA did not take a position on this issue. OCA did not take a formal position on this issue but was involved in the vetting of the Settlement terms. (OCA St. in Support, at 25).

Finally, I note that the Settlement terms relating to stormwater have two separate components. One is generally applicable to all PWSA customers (stormwater credit program and education and outreach) and the other is applicable solely to the School District, as discussed further below. The School District "fully endorses all of the stormwater-related provisions of the Settlement" as in the public interest. (School District St. in Support, at 7). These two components are:

2. Stormwater Credit Program

Under the Settlement, PWSA agrees to meet with the Parties within 60 days of the issuance of a final order in this proceeding to work on identifying ways to reduce impervious areas or to implement stormwater controls on property subject to the stormwater fee and to help customers obtain credits offsetting stormwater fees as a result of those efforts. This discussion will also include the identification of potential funding opportunities, along with providing assistance to secure any available funds if possible. Finally, at the collaborative, the Parties will not be precluded from discussing alternatives to a stormwater fee other than basing it on square footage of impervious surface area for PWSA's consideration in making future stormwater fee filings with the Commission. (Joint Petition ¶ 9.C.3.1).

PWSA explains that the Settlement provision is responsive to the record evidence in this proceeding regarding concerns about the availability of credits to stormwater customers. The collaborative will give interested parties, including RDC, an opportunity to obtain additional information as to how they might qualify for credits by reducing impervious areas or implementing stormwater controls on their properties. Further, PWSA explains, “[t]o the extent that customers are able to reduce their stormwater runoff, they will facilitate PWSA’s stormwater management efforts by reducing their demand for stormwater service and the overall costs of this program.” (PWSA St. in Support, at 43, citing to PWSA St. No. 8, at 7, 16, 18; and to PWSA St. No. 5-R, at 15-17). Therefore, this term of the Settlement is in the public interest and should be approved without modification.

3. Education and Outreach

In its Statement in Support of the Settlement, PWSA points to the various testimony describing, in its view, PWSA’s commitment to educating customers about PWSA’s stormwater rate and tariff. For example, PWSA explains that since implementing stormwater rates in 2022, PWSA has developed numerous educational materials including a dedicated website, materials describing the stormwater rates, and public facing efforts regarding the Stormwater Strategic Plan. Further, PWSA’s ongoing public outreach regarding stormwater

include social media, ongoing media relations, and presentations to community groups. PWSA also maintains its Stormwater Fee Finder website, which is a searchable database where customers can view information regarding their specific property and understand how the stormwater charge affects their property. (PWSA St. in Support, at 44, citing PWSA St. No. 5, at 30-34).

Regarding PWSA's stormwater credit program, PWSA submitted testimony describing PWSA's updates to the credit program, including more explicitly stating that nonresidential properties can receive available credits through passive management of stormwater via the property's green space, and offering a one-time \$40 credit for installed rain barrels that capture and retain roof runoff from residential properties. (PWSA St. in Support, at 44-45, citing PWSA St. No. 8 at 18).

Next, PWSA explains that the Settlement is in the public interest as it addresses Pittsburgh United's concerns by providing that PWSA will develop an outreach and education plan specifically related to stormwater service that will help to educate customers about stormwater mitigation measures and available assistance. As part of this plan, PWSA will train customer service representatives so that they are prepared to prompt customers about whether they have adopted or are interested in adopting green stormwater mitigation measures, discuss the benefits of green stormwater mitigation including the \$40 rain barrel credit, and discuss whether customers are enrolled in or eligible for stormwater discounts as part of the Bill Discount Program. The Settlement also provides that this plan will include a plan for community engagement that will be developed in conjunction with the LIAAC and using feedback from previous outreach PWSA has conducted regarding the Stormwater Strategic Plan. (PWSA St. in Support, at 46).

As noted above, Pittsburgh United supports the Settlement as just, reasonable, and in the public interest. It acknowledged that its recommendations during litigation were not adopted in their entirety, but overall, the proposed Settlement "helps to reasonabl[y] address [Pittsburgh United's] concern that low income customers have equitable access to stormwater mitigation measures." (Pittsburgh United St. in Support, at 12).

4. Arrangements applicable to the School District

Concerned about the “large and growing stormwater charges” imposed on it by PWSA, and the effect on its budget, the School District intervened, submitted testimony and exhibits, and made numerous arguments about the stormwater charges. (PWSA St. in Support, at 2). The bases for the School District’s intervention were two-fold. First, in the School District’s view, the recent Commonwealth Court’s *West Chester* decision “suggests” that PWSA’s fee for stormwater is legally unsupportable since it should be deemed a tax, and as a tax-exempt entity, the School District has no obligation to pay any tax. (*Id.*). However, as discussed above, this basis need not be addressed in this decision given the Settlement terms.

Second, the School District challenged PWSA’s stormwater-related rate design and cost allocation decisions, leading to the School District’s recommendation that the Commission direct PWSA to establish a separate rate classification for the School District – given its unique status as a governmental entity serving many of the most impoverished residents in the community – in order to obtain an 85% discount on the stormwater charges to the School District. In the School District’s view, such stormwater discount is exactly comparable to the one PWSA already provides to low income residential customers, the same socio-economic clientele being served by the School District. (*Id.* at 3).³⁰ Alternatively, the School District argued that it should be exempt from stormwater charges or receive substantial credits.

The School District also pointed out that it owns a large number of buildings and facilities and has a significant amount, about 6.9 million square feet, of impervious surfaces within its footprint, which equates to about 4,264.5 Equivalent Residential Units (“ERUs”) as defined by PWSA. About 45 percent of the School District total land area, according to PWSA, constitutes impervious surface. (School District Statement No. 1, at 11). In the School District’s view, PWSA’s impervious surface methodology, used for allocating stormwater costs, does not take into account the significant amount of the School District’s land area that is permeable.

³⁰ For a more detailed description of the socio-economic clientele of the School District, the second largest school system in Pennsylvania, see the School District’s St. in Support, at 3-4, with cites to the record provided by its witnesses.

To resolve the School District’s issues, the Settlement provides detailed terms through which PWSA will coordinate with the School District and assist it with identifying applicable credits based on its existing infrastructure, and also identify Best Management Practices (“BMPs”) that may be installed on School District properties to reduce stormwater runoff and stormwater bills in the future. As pointed out by the School District, among the important features of the School District specific stormwater provisions of the Settlement are the following:

- Until PWSA files its next base rate case, both PWSA and the School District have agreed to appoint designated persons to be the points of contact for issues relating to the School District’s stormwater management activities.
- PWSA has agreed to apply a 5% credit retroactive to January 12, 2022 (“Retroactive Credit”) to the first stormwater bills issued to the School District within the month after the effective date of the rates as approved by the Commission in this proceeding.
- The School District and PWSA have committed to work in good faith together for a year after a final Commission order approving the Settlement to fully evaluate the School District’s properties to determine, consistent with PWSA’s Stormwater Credit Program requirements, the amount of the future stormwater credits to be applied to the School District on a going-forward basis.
- PWSA has agreed to jointly work with the School District to apply for third party funding opportunities to assist in improving the School District’s stormwater management practices, conversion of impervious surfaces to pervious surfaces and any other steps reasonably available to qualify for credits pursuant to PWSA’s prevailing Stormwater Credit Program.
- The School District has agreed to work with PWSA regarding potential property presently owned by the School District that may be available for the construction of stormwater controls /projects/measures.
- PWSA has agreed to assist the School District in identifying potential projects and provide guidance to the School District in hiring consultants and contractors for the successful completion of the identified stormwater controls/projects/measures.
- PWSA has agreed to provide guidance to the School District on the operation and maintenance of the constructed stormwater controls/projects/measures.

School District St. in Support, at 6-7 (citing the specific Settlement provisions).

Thus, both PWSA and the School District conclude that the Settlement terms are in the public interest because, “In short, the School District-centered Settlement provisions recognize that there are joint opportunities for the School District and PWSA to work together collaboratively on stormwater management and mitigation projects that have not been fully explored to date, but which could provide mutual benefits to both parties (and the public generally) if fully implemented.” (*Id.* at 6).

Further, Pittsburgh United explains that overall, the provisions are in the public interest and strike a reasonable balance that address their concern raised during litigation. Pittsburgh United’s concern was, while strongly in support of the need for increased funding for public schools, that it would be inappropriate to fully exempt the School District from payment of a stormwater fee, which would pass additional costs on to residential customers, adversely affecting the ability of Pittsburgh’s low income families to make ends meet. (Pittsburgh United St. in Support, at 15).

D. Customer Service

Some of the Joint Petitioners had specific concerns about various issues related to customer service. Various testimony concerning these issues were submitted, in addition to PWSA, by OCA and Pittsburgh United. I&E notes that it did not submit testimony regarding this issue, but shared the concerns of the interested Joint Petitioners and does not oppose them. (I&E St. in Support, at 21). OSBA notes that it did not take any position on this issue. (OSBA St. in Support, at 7). As a result of litigation and negotiated settlement, and recommendations made by OCA and Pittsburgh United, PWSA agreed to several customer service and quality of service improvements. All the Joint Petitioners agree, or do not oppose, the following negotiated terms.

1. Call Center Performance

In the Settlement, the Joint Petitioners agree that PWSA's Call Center will use best efforts to meet its internal standards of an average answer time of one (1) minute and an abandonment rate of 3% or less for an average of all its customer queues each quarter. The quarterly calculations of the average answer time and abandonment rate will be separated by queue specific performance. (Joint Petition ¶ 9.D.1.).

2. Customer Assistance Programs Eligibility Screening

In the Settlement, the Joint Petitioners agree that PWSA shall develop and implement call scripting and checklists for its Customer Service Representatives ("CSRs") so that CSRs are required to assist in screening customers for eligibility in its low income assistance programs. Further, PWSA will screen all new and moving customers for income level and eligibility for assistance at the time their service is established according to the terms and conditions set forth in the Joint Petition. (Joint Petition ¶ 9.D.2.).

3. Root Cause Analysis

In the Settlement, the Joint Petitioners agree that PWSA shall update its "root cause" analysis to include evaluation of informal customer complaints submitted to the Commission's Bureau of Consumer Services ("BCS") as well as formal customer complaints filed with the Commission according to the terms and conditions set forth in the Joint Petition. (Joint Petition ¶ 9.D.3.).

4. Convenience Fees (withdrawn by PWSA)

In the Settlement, the Joint Petitioners agree that PWSA withdraws its proposal regarding the cost responsibility for convenience fees. (Joint Petition ¶ 9.D.4.). PWSA had proposed to return to its historical policy of requiring customers incurring third party fees to pay for them, such as for payment by credit and/or debit cards by residential customers. As part of the

Settlement, PWSA agreed to withdraw its initial proposal to maintain the status quo of recovering the costs of convenience fees from all ratepayers through rates.

E. Low Income Customer Assistance Programs

Similar to the customer service issues above, OCA and Pittsburgh United had specific concerns about various issues related to low income customer assistance programs. Various testimony concerning these issues was submitted, in addition to PWSA, by OCA and Pittsburgh United. I&E explains that it did not submit testimony, but shares the concerns of the interested Joint Petitioners, and played an active role in the settlement negotiations regarding these programs and monitored the proposals and counter proposals offered by the parties throughout this proceeding. Therefore, I&E does not oppose these settlement terms as a full and fair compromise that provides PWSA, the Joint Petitioners, and the Commission with regulatory certainty and resolution of the settled upon low income customer assistance programs, which are in the public interest. (I&E St. in Support, at 24).

OSBA explained that it did not participate in the negotiation of the specific provisions in the Settlement regarding low income programs and therefore takes no position regarding these costs. OSBA did note that it “relies on the Authority and the Commission to ensure that funds provided by small business customers are expended in an efficient and effective manner.” (OSBA St. in Support, at 8).

PWSA has agreed to several recommendations regarding improvements to its Low income customer service programs. The following are the negotiated settlement terms:

1. Cross Enrollments

In the Settlement, the Joint Petitioners agree that, within thirty (30) days of the entry of an Order in this case, the PWSA’s Cares Team will contact the City of Pittsburgh and the Allegheny Department of Human Services (Allegheny DHS) to identify potential mechanisms through which it can cross-enroll customers through other municipal offices serving the City of

Pittsburgh or through coordination with programs or services administered by the Allegheny DHS. Further, PWSA will also solicit leads for contacts from its Low Income Assistance Advisory Committee (“LIAAC”) members and report the status of this process to LIAAC. (Joint Petition ¶ 9.E.1.).

Both OCA and Pittsburgh United support this provision as a necessary step to improve customers’ access to service. Further, the coordination related to cross-enrollment will help to increase coordination between PWSA, the City, and Allegheny DHS services, which PWSA also finds is in the public interest. (OCA St. in Support, at 36); Pittsburgh United St. in Support, at 22; PWSA St. in Support, at 63).

2. Household Affordability Study

In the Settlement, the Joint Petitioners agree that, within one year of the final order in this proceeding, PWSA will update its 2019 Household Affordability Study which will include, at minimum, the five (5) requirements set forth in the Joint Petition. Further, a preliminary draft will be shared with and discussed among the LIAAC members and PWSA will consider, in good faith, whether to incorporate any feedback provided as part of the final study. The final study will be provided to members of the LIAAC. Finally, PWSA will explain, if applicable, why any recommendations of LIAAC members were not incorporated into the final study. (Joint Petition ¶ 9.E.2.).

The Joint Petitioners submit that this resolution is in the public interest because PWSA will undertake to evaluate the current needs of its low income customers based on current economic conditions and trends, it provides guidance as to minimum elements to include as part of the study so that PWSA, the parties and the Commission can be assured that PWSA is factoring in the elements that parties in this proceeding have deemed important. Further, in PWSA’s view, by agreeing to share a preliminary draft of the study with LIAAC members and consider any feedback received, PWSA is agreeing to continue its long-established collaboration with community members and advocates working to address the needs of low income customers. (PWSA St. in Support, at 65).

3. Bill Discount Program

In the Settlement, the Joint Petitioners agree that PWSA will increase the current 50% volumetric discount to 60% for customers with annual income at or below 50% of the Federal Poverty Level (“FPL”). Also, PWSA will implement its proposal to expand the BDP maximum income eligibility from 150% to 200% of the FPL. Further, PWSA agrees to withdraw its proposal to revise the current BDP structure effective January 1, 2025, in recognition of its agreement not to implement its proposed rate structure change to remove the minimum charge. Further, PWSA will provide a 50% reduction for BDP participants for the PennVest Charge. (Joint Petition ¶ 9.E.3.).

Finally, regarding PWSA’s Arrearage Forgiveness Program (“AFP”), PWSA agrees to increase the current \$30 credit toward a participant’s arrears to \$40. Further, in its next base rate case, PWSA will propose to implement a change to its AFP that would allow then existing and all future participants to receive arrearage forgiveness over no longer than a 36-month period and will not require AFP participants to make a co-payment towards the pre-program frozen arrears. Finally, all parties to this proceeding reserve their rights regarding any cost recovery proposal regarding the AFP.

In OCA’s and Pittsburgh United’s views, review of PWSA’s enrollment of its Low income customers in its BDP and/or AFP was an essential component of this rate case. During the litigation phase of this case, both OCA and Pittsburgh United raised concerns that PWSA is not adequately serving the BDP population. Further, PWSA concludes that these settlement terms provide a reasonable compromise and are in the public interest. The Settlement provides additional assistance for customers enrolled in PWSA’s BDP, and, in particular, provides further discounts for the lowest income customers whose incomes are at or below 50% of FPL. These terms also provide a focus for additional items to be addressed in PWSA’s next rate case, taking into account rate structure changes that may have a significant impact on low income customers. As such, the Joint Petitioners assert that terms are in the public interest and should be approved.

4. Hardship Fund

In the Settlement, the Joint Petitioners agree that PWSA will implement its initial proposal to allocate two separate annual grants; one to be distributed to eligible water customers and one to be distributed to eligible wastewater customers. Further, the maximum Hardship Fund grant will be increased from \$300 to \$450. Finally, PWSA agrees to include an allocation in rates as necessary to continue to fund the Hardship Fund when current settlement funds are exhausted and to the extent employee and other volunteer donations are insufficient. (Joint Petition ¶ 9.E.4.).

The Joint Petitioners assert that this provision is a reasonable resolution of the concerns raised by Pittsburgh United, which recommended further increases to the fund. The Joint Petitioners assert that these settlement terms are in the public interest as they provide a reasonable expansion of grant assistance available to customers who may be struggling to afford their PWSA bills, by increasing the maximum amount of each grant and making a grant available for both water and wastewater service. The Settlement also provides for funding through rates, if necessary, once other funding sources are exhausted. This ensures that these Hardship grants will continue to be available to customers in need. (Pittsburgh United St. in Support, at 30-31; PWSA St. in Support, at 70).

5. Low Income Assistance Advisory Committee

In the Settlement, the Joint Petitioners agree that PWSA commits to leading a discussion of the Low Income Assistance Advisory Committee (“LIAAC”) members regarding the following topics: (1) evaluation of the potential benefits of developing a program to provide no-cost stormwater mitigation measures for customers; (2) consideration of how enhanced technology could increase the enrollment and retention of low income customers in PWSA’s low income customer assistance programs; and, (3) discussion of how or whether to encourage low income tenants to transfer service into their own name. And, as part of its next base rate case, PWSA will report on the results of its collaboration with LIAAC regarding the above topics and

include any proposed recommendations resulting from the collaboration. (Joint Petition ¶ 9.E.5.).

OCA witness Mr. Colton recommended that PWSA submit to its LIAAC the question of how enhanced technology could increase the enrollment and retention of low income customers in BDP. (OCA St. No. 4, at 23). PWSA witness Ms. Mechling explained that PWSA did not support having the Commission mandate, as part of this case, specific topics or reporting requirements for future LIAAC meetings that members may or may not find of interest and which would require additional staff time and resources to prepare. (PWSA St. No. 6-R, at 27-28).

The Joint Petitioners assert that the settlement terms are a reasonable way in which to address concerns raised in this proceeding by OCA. PWSA has evaluated the specific proposals to be further discussed with LIAAC and concluded that voluntary agreement to discuss them further in a collaborative environment is a logical way to more fully consider the pros and cons of the proposals and to get real world feedback from the members of the committee. PWSA also committed to reporting on the results of these discussions and offering any proposals in furtherance of them as part of the next base rate case. As PWSA explains, this approach has a proven track record of positively influencing PWSA's low income customer assistance programs and is a superior way to more fully consider the issues raised rather than awaiting the outcome of a litigated solution. (PWSA St. in Support, at 72).

F. Engineering and Operations Issues

OCA submitted testimony in response to PWSA's initial filing regarding PWSA's engineering and operations issues. Pittsburgh United did not take a position as to these issues. (Pittsburgh United St. in Support, at 33). I&E explains that although it did not submit testimony regarding PWSA's engineering and operations issues raised by other parties, I&E shares the concerns of the interested Joint Petitioners, explaining that when it comes to safe and reliable service, safety and reliability issues are always a concern of I&E regarding every public utility operating in Pennsylvania. Additionally, I&E explained it played an active role in the settlement negotiations regarding these issues and monitored the proposals and counter proposals

offered by the parties throughout this proceeding. Therefore, I&E supports these settlement terms as a full and fair compromise that provides PWSA, the Joint Petitioners, and the Commission with regulatory certainty and a path forward regarding the engineering and operations issues raised by the parties. (I&E St. in Support, at 26).

As a result of OCA's submitted testimony, the shared concerns of the Joint Petitioners, and the settlement negotiations, PWSA has agreed to the following terms, as described by OCA, "that will directly improve PWSA's operations and service or facilitate the evaluation of its practices in order to make the rate increase more equitable for its customers from an engineering and operations standpoint." (OCA St, in Support, at 43). All of the Joint Petitioners agree that these terms, as an overall part of the Settlement, are just, reasonable, and in the public interests. These terms include:

1. Customer Complaint Logs

In the Settlement, the Joint Petitioners agree that PWSA will maintain complete data regarding customer complaints, work order and service logs which can be made available via Excel in response to any discovery requests by the parties in, e.g., PWSA's next base rate case. If the data is requested as part of discovery, the parties agree to collaborate on an informal basis to ensure that it is provided in a mutually acceptable and reasonably sortable format. (Joint Petition ¶ 9.F.1.).

2. High Pressures

In the Settlement, the Joint Petitioners agree that PWSA will continue to capture pressure inquiries or complaints in its work order logs. (Joint Petition ¶ 9.F.2.).

3. Isolation Valves

In the Settlement, the Joint Petitioners agree that PWSA will continue its valve exercising program where all valves are inspected and exercised over a 5-year cycle. Further,

starting by or before the fourth quarter of 2024, PWSA will use best-efforts to inspect and exercise critical valves over a 3-year cycle. Finally, PWSA shall maintain records of when each valve is exercised. (Joint Petition ¶ 9.F.3.).

4. Meter Testing and Replacement

In the Settlement, the Joint Petitioners agree that PWSA will use best efforts to test or replace 8,000 meters per calendar year after 2023 until all undocumented meters are either tested or replaced. (Joint Petition ¶ 9.F.4.).

5. Flushing Distribution System

In the Settlement, the Joint Petitioners agree that PWSA will continue to make an effort to identify, locate and track dead-end lines to make sure they have a blow-off or hydrant so they can be flushed. (Joint Petition ¶ 9.F.5.).

6. Surface Restoration

In the Settlement, the Joint Petitioners agree that PWSA will continue to coordinate with the City of Pittsburgh and other municipalities to replace water and sewer mains, as much as possible, just prior to repaving. And PWSA will continue to coordinate projects that are not part of an emergency, Department of Environmental Protection or Environmental Protection Agency deadline with the City of Pittsburgh, the Department of Transportation and other public utilities. (Joint Petition ¶ 9.F.6.).

G. Public Input Testimony – PWSA’s Response

Finally, PWSA submits that the Settlement reasonably addresses many of the concerns raised by the consumers and other witnesses during the six public input hearings. PWSA points out that PWSA witness Ms. Mechling summarized and responded to much of this testimony and comments in her rebuttal testimony. (PWSA St. in Support, at 84, citing to PWSA

St. No. 6-R, at 47-54). In her rebuttal testimony, Ms. Mechling summarized the concerns raised by customers as broadly falling into categories including: (1) affordability of the proposed rate increase; (2) suggestions that PWSA should exhaust all other funding and financing options before implementing a rate increase; (3) outreach regarding the availability of assistance programs; (4) notice of the public input hearings; and (5) service issues. (PWSA St. in Support, at 84).

PWSA asserts that concerns about the level of the proposed rate increase are addressed in several ways by the Settlement. First, the Settlement provides for a total increase of \$35,997,325 (exclusive of the 5% DSIC). PWSA points out that this is significantly less than the original proposal of \$146.1 million (which included an increase of \$46.8 million in 2024, \$45.4 million in 2025, and \$53.9 million in 2026). Second, this is a one-time increase, as opposed to the multiyear rate increase originally proposed. This, in conjunction with the stay out provision by which PWSA has agreed not to file a general rate increase any sooner than January 1, 2025 for rate implementation in 2026, will provide customers with a measure of rate stability for the next two years (2024 and 2025). The Settlement provides for a much more modest rate increase that addresses these affordability concerns. (PWSA St. in Support, at 84).

PWSA also points out that one customer testified about the volumetric aspect of PWSA's rate structure and the negative impact it has on her monthly bill because her household uses less than the minimum allowance associated with her meter size. (PWSA St. No. 6-R at 52). PWSA asserts that, although the Settlement does not result in the minimum allowance being removed as part of this rate case as PWSA had originally proposed, it does provide that PWSA will prepare its billing systems and propose to remove the minimum allowance in its next rate case. (Joint Petition ¶ 9.A.3.a). In PWSA's view, removal of the minimum allowance will address this customer's concern more fully as part of a future rate case, pursuant to the Settlement. (PWSA St. in Support, at 85).

Next, PWSA points to Ms. Mechling's rebuttal testimony during which she described how PWSA has responded to individual service issues and provided numerous forms of notice regarding the public input hearings. In her testimony, Ms. Mechling explained that PWSA

contacted individual customers after the hearings in order to resolve their specific concerns. Further, Mr. Pickering and Mr. Barca explained how PWSA has and continues to pursue hundreds of millions of dollars in low-interest loans and grants to fund its capital improvement program and other aspects of its operations to reduce the rate burden on customers prior to requesting a rate increase. (PWSA St. in Support, at 85, citing to PWSA St. No. 1; PWSA St. No. 2, at 33).

Finally, PWSA points out that it has agreed to a number of customer education and outreach, customer service, low income assistance, and quality of service measures, all of which will provide customers with greater benefits in terms of financial assistance and/or improved infrastructure and service.

H. Pro Se Consumer Complainants Objections

In response to the Settlement Consumer Letter, on November 8 and 9, 2023, I timely received letters from consumer Complainants, Ms. Shingler and Ms. Abrams, respectively. Both Complainants object to the Settlement, which objections are filed of record. The other two *pro se* Complainants, Mr. Bergholz and Ms. Banal, have not filed or sent me responses to the Settlement.

Ms. Shingler objects to the Settlement, asserting that “it is not in any way just, reasonable or in the public interest.” Like several consumers who testified at the Public Input Hearing, Ms. Shingler complains that PWSA customer are paying the price for the years of neglect of PWSA and PWSA should be held more accountable for this neglect. Specifically, Ms. Shingler points to Appendix A, proposed paragraph 34, which states that the 2023-2027 Capital Improvement Plan, approved by PWSA’s Board of Directors on October 28, 2023, includes over \$1.8 billion in capital improvements, which is the “RESULT OF MULTIPLE DECADES OF DEFERRED MAINTENANCE AND LACK OF CAPITOL INVESTMENT.” (Emphasis in original). In Ms. Shingler’s view, the individuals responsible for this conduct should not be allowed to work at PWSA, punished for criminal negligence, and/or theft since they “allowed our water system to rot away for year, after year, after year.”

Further, Ms. Shingler takes issue with the need for a stormwater charge. She further argues that PWSA is not a “welfare system,” and thus PWSA should charge all customers the same and not discount the bills of consumers who cannot pay, because this imposes an undue burden on ratepayers like her, who must assume these rising rates, and can barely afford to do so.

Ms. Abrams also objects to the Settlement for much of the same reasons as Ms. Shingler. Ms. Abrams takes issue with imposition of the stormwater fee, and that PWSA customers will be absorbing the high costs of PWSA’s past business practices and neglect. Further, while Ms. Abrams commends the Bill Discount Program, Ms. Abrams also expresses concern that other ratepayers are forced to pay these costs and questions whether there are other welfare programs to pay for these low income discounts, other than the remaining ratepayers.

VIII. RECOMMENDATION

After an exhaustive and careful review of the Joint Petition; the seven Statements in Support of the Joint Petition submitted by the statutory advocates and active intervenors; the voluminous record evidence consisting of over 5,000 pages of written and oral testimony, exhibits, stipulations, and public input hearing testimony; and the written objections of the *pro se* consumer complainants, I conclude that the Joint Petition is supported by substantial evidence, is consistent with the Public Utility Code and is in the public interest.

Therefore, this decision recommends that the Commission approve the Settlement. However, as discussed above, and as provided for in the Ordering paragraphs, this decision also recommends that PWSA be directed to provide certain information with its compliance tariffs—namely, proofs of revenue and supporting calculations for water, wastewater, and stormwater services, consistent with its past rate cases; and certain information regarding any PennVest loans, as more fully explained herein.

By all accounts, a review of PWSA’s initial filing reveals that its initial proposed requests were significant not only in the amount requested but also in regard to the number of consecutive years. As OCA aptly summarized, PWSA’s initial filing was “unprecedented in

scope and complexity.” (OCA’s St. in Support, at 1). Further, PWSA’s Chief Executive Officer, William J. Pickering, acknowledged in his testimony that PWSA’s initial filing was significant, that its proposals were “unique” and the amount requested may seem “like an extraordinary request.” (PWSA’s St. No. 1, at 5, 13, and 4 respectively).

I also recognize that for the past five years, since 2018, PWSA has been on a journey to bring its operation into compliance with the Public Utility Code and to conform to the rules and regulations which govern jurisdictional public utilities. The process has involved numerous Commission proceedings and has resulted in the modification of existing procedures and the development of new procedures for the utility’s operations. As pointed out in a prior rate case, the Commission’s requirement for PWSA to create a separate stormwater tariff with a separate stormwater fee is new, as no other Commission-regulated utility has a separate stormwater tariff.³¹

Finally, prior to coming under the jurisdiction of the Commission and continuing through to the present, PWSA has had to manage other state and federal regulatory compliance obligations related to an infrastructure that has had little to no investment for nearly 30 years. Further, this rate case still demonstrates the effect of the onset of the COVID-19 pandemic, including the financial impacts to PWSA and its ratepayers.³²

I also recognize that since 2018, the Commission has approved three rate increases for PWSA as a result of rate filings filed in 2018, 2020, and 2021. Therefore, it is understandable that this proceeding generated much concern from the public as many PWSA customers expressed what they described as disbelief or shock of the magnitude and years of proposed rate increases. It is also understandable that within this setting, customers within PWSA’s service territory expressed frustration that they cannot simply shop for a better price if they are unable to afford PWSA’s rates for water, wastewater, or stormwater service.

³¹ See, *Pa. Pub. Util. Comm’n v. Pittsburgh Water & Sewer Auth.*, Docket No. R-2020-3017951 (Order entered Dec. 3, 2020).

³² *Id.*

It is also significant that many of the concerns expressed at the public input hearings and by the *pro se* Complainants were shared by the statutory advocates and active intervenors in this proceeding. Notwithstanding all of these challenges, the Joint Petitioners worked diligently to craft a reasonable settlement that is in the public interest. PWSA's original filing was vigorously challenged in litigation by each of the Joint Petitioners, each representing various consumer or business customers. Each Joint Petitioner clearly considered each provision thoroughly, individually and within the context of the overall settlement package. To achieve the Settlement, the Joint Petitioners agreed to compromise on many issues in the interest of designing a complete Settlement that reasonably resolves all issues.

Viewing the individual Settlement provisions in context of the totality of the Settlement, I agree with the Joint Petitioners and find approving the Settlement is in the public interest. Specifically, the following terms are in the public interest: the Settlement allows PWSA to increase its annual base rate in February 2024 by \$35,997,325 (in contrast to the original \$146.1 million over three years requested by PWSA); it eliminates further rate increases contemplated in 2025 and 2026; it eliminates the proposed two new surcharges (IIC and CAC); and it provides a "stay out" provision so that PWSA cannot file another rate increase until January 1, 2025, for rate implementation in 2026. Further, PWSA agrees to participate in collaborative meetings to find ways to reduce impervious area and increase stormwater credits, and agrees to certain enhancements to its low income assistance programs, customer service and quality of service issues.

I also agree with the Settling Parties that the Settlement is adequate for PWSA to provide safe, reliable water, wastewater and stormwater services, and comply with the Public Utility Code and other environmental regulations imposed by other agencies.

The new rates to collect the settlement level of water, wastewater and stormwater revenues from each class are shown on Appendix B of the Joint Petition. These rates are allocated to water, wastewater and the stormwater rate. (Settlement, Appendix B). If PWSA's original Rate filing were approved, the total bill for water, wastewater, and stormwater services

for a typical Residential customer using 3,000 gallons of water per month and charged the base rate for stormwater services would have increased from \$86.43 to \$103.41 per month or by 19.6% in 2024; then increased from \$103.41 to \$123.55 or by 19.5% in 2025; and then increased from \$123.55 to \$146.12 or 18.3% in 2026— for a total increase of \$59.69 or 69.1%. In contrast, under the Settlement, the same typical residential water, wastewater, and stormwater customer will see the total bill increase by \$13.84 -- from \$86.43 to \$100.27, or by 16%, with no additional increases in 2025 and 2026, as originally filed. (Settlement, Appendix C).

Additionally, the Settlement provides for a stay out provision. Although limited in duration, until a rate filing in 2025 for implementation in 2026, it will provide some stability for PWSA's charges and certainly to ratepayers who will experience rate continuity while the stay out is in effect. I find persuasive the assertion by OCA that the base rate stay out is an important term because the evidentiary record demonstrates that PWSA may experience significant operational changes in 2025, including that it anticipates first-time ownership of the system assets it now operates as of January 2025 and that its Cooperation Agreement with the City of Pittsburgh may be amended or terminated after January 1, 2025. (OCA St. 2, at 17). Further, I also find persuasive OCA's position during litigation that because any rates proposed prior to 2025 could not capture the currently unidentifiable and unquantifiable rate consequences of these two potentially material changes, permitting PWSA to propose rates prior to 2025 would deprive the Commission of the information necessary to fulfill its duty of ensuring that PWSA's rates were just and reasonable. (OCA St. in Support, at 13). Therefore, this term is in the public interest.

As to stormwater, the Settlement provides for PWSA's agreement to participate in collaborative meetings to find ways to reduce impervious surface areas and increase stormwater credits. As to low income assistance programs, customer service and quality of service, the Settlement also provides for enhancements to these critical areas.

On balance, I also find that approving the Settlement will enable PWSA to move forward with ensuring its ability to recover the costs of maintaining the water, wastewater, and stormwater system, meeting all regulatory requirements, while also recognizing the needs of its

customers and taking all measures necessary to provide safe and reliable water, wastewater, and stormwater services at a just and reasonable price.

Consequently, this decision recommends that the Commission approve the Joint Petition, with the additional tariff filing compliance recommendations.

IX. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 1308(d).

2. All rates established by the Commission for public utilities must be “just and reasonable.” 66 Pa.C.S. § 1301.

3. It is the policy of the Commission to encourage settlements. 52 Pa. Code § 5.231.

4. In the Commission’s judgment, the results achieved from a negotiated settlement in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

5. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the proposed terms and conditions are in the public interest. *Warner v. GTE N., Inc.*, Docket No. C-00902815 (Opinion and Order entered Apr. 1, 1996) (*Warner*); *Pa. Pub. Util. Comm’n. v. CS Water & Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

6. The focus for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters, but whether the public interest is served by the settlement. *Pa. Pub. Util. Comm’n v.*

City of Lancaster – Bureau of Water, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011).

7. A “black box” settlement, where the settlement provides for an increase in the utility’s revenues but does not indicate the specifics of how the parties calculated the increase, is permitted by the Commission as a means of promoting settlements in contentious base rate proceedings. *Pa. Pub. Util. Comm’n v. Wellsboro Elec. Co.*, Docket No. R-2010-2172662 (Order entered Jan. 13, 2011); *Pa. Pub. Util. Comm’n v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Opinion and Order entered Dec. 19, 2013).

8. When the Commission makes a final decision concerning a rate filing and permits or requires the adoption of rates other than the rates originally filed, the public utility affected must file, within 20 days of the entry of the final order, a tariff revision consistent with the Commission’s decision together with a proof of revenues and supporting calculations. 52 Pa. Code § 5.592(a).

9. A Commission decision must be supported by substantial evidence in the record. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

X. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement filed on October 30, 2023, by The Pittsburgh Water and Sewer Authority, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Pittsburgh United's Our Water Table, the City of Pittsburgh, and the School District of Pittsburgh, be granted, and the Settlement be approved and adopted, with the modifications set forth herein.

2. That The Pittsburgh Water and Sewer Authority is authorized to file tariffs, tariff supplements or tariff revisions containing rates, rules and regulations, consistent with the Joint Petition for Settlement, to produce an increase of \$35,997,325 in base rate revenue, effective February 15, 2024, consistent with the rates, rules and regulations set forth in Appendices E (Water), F (Wastewater) and G (Storm Water) to the Joint Petition for Settlement with the modifications set forth below.

3. That The Pittsburgh Water and Sewer Authority shall be permitted to file tariffs in the form set forth in Appendices E (Water), F (Wastewater), and G (Storm Water) to the Joint Petition for Settlement, with the modifications set forth below, to become effective upon at least one day's notice, for service rendered on and after February 15, 2024, so as to produce an annual increase in revenues consistent with this Order.

4. That, within twenty (20) days of the entry of the Final Order in this proceeding, The Pittsburgh Water and Sewer Authority shall file proofs of revenues and supporting calculations for water, wastewater, and stormwater services, respectively, detailing The Pittsburgh Water and Sewer Authority's authorized operating revenues under present and Settlement rates, broken down by base rate revenues, distribution system improvement charge revenues, and other revenues.

5. That The Pittsburgh Water and Sewer Authority is directed that any tariff or tariff supplement filing to incorporate a PennVest loan into The Pittsburgh Water and Sewer Authority's PennVest Charge must be filed with the Commission upon at least sixty (60) days' notice of such filing.

6. That The Pittsburgh Water and Sewer Authority is directed that prior to or in conjunction with The Pittsburgh Water and Sewer Authority's first tariff or tariff supplement filing to incorporate a PennVest loan into The Pittsburgh Water and Sewer Authority's PennVest Charge, The Pittsburgh Water and Sewer Authority shall revise its PennVest Charge to: (1) either explicitly exempt wholesale customers from The Pittsburgh Water and Sewer Authority's PennVest Charge, or recalculate The Pittsburgh Water and Sewer Authority's PennVest Charge by incorporating wholesale customers into PennVest Charge calculations; and (2) propose any rate changes necessary to modify the PennVest Charge formula definitions for "Consumption" and "Conveyance" to include estimated consumption for unmetered customers and to impose flat rate charges and credits for unmetered customers based on estimated consumption.

7. That The Pittsburgh Water and Sewer Authority is directed to file the following supporting information with the Commission with any tariff supplement filing to incorporate a PennVest loan into The Pittsburgh Water and Sewer Authority's PennVest Charge:

- a. Final and red-lined copies of the proposed tariff or tariff supplement to incorporate the loan into the PVC.
- b. A summary of the terms of the loan, including the loan date, amount, interest rates, term of loan, annual principal and interest payments, and security certificate docket number. The date of each expected interest rate or annual principal and interest payment change must be identified for each loan.
- c. Copies of executed loan agreement documents and final amortization schedules.
- d. A statement that the project funded by the loan is used and useful.
- e. A copy of a proof of revenues and supporting calculations for the affected type of service reflecting PVC revenues under present and proposed rates.
- f. Copies of any supporting documentation used to determine the PVC, including electronic working papers.
- g. A copy of PWSA's customer notice that it issued in accordance with the Settlement's Paragraph 9.A.3.b.ii.(a) and 52 Pa. Code § 53.45(g).
- h. A copy of PWSA's affidavit of customer notice confirming that notice requirements have been met accordance with 52 Pa. Code § 53.45(h).

- i. A copy of a signed verification statement for the information being provided in accordance with 52 Pa. Code § 1.38.

8. That upon review of the supporting data submitted by The Pittsburgh Water and Sewer Authority, the Commission or its designee will, within thirty (30) days of its submission, notify the utility, by Secretarial Letter, of any deficiency in the submission. Upon notice of a deficiency in the supporting data as filed, the utility shall rectify any deficiencies within ten (10) business days. A tariff or tariff supplement not accompanied by required data or otherwise deemed deficient will be rejected unless the Commission, by order and for good cause shown, allows the tariff or tariff supplement to be filed.

9. That once a PennVest loan is incorporated into The Pittsburgh Water and Sewer Authority's tariff, semi-annual adjustments and annual reconciliation filings related to that loan be reviewed by the Commission or its designee. To address future PennVest Charge filings, the Commission should designate the Bureau of Technical Utility Services to review tariff supplement filings to incorporate PennVest loans into The Pittsburgh Water and Sewer Authority's PennVest Charge for analysis and a recommended Order. For all subsequent Section 1307 rate change requests, including semi-annual adjustments and annual reconciliation filings for loans included in The Pittsburgh Water and Sewer Authority's PennVest Charge, the Commission should designate the Bureau of Audits as being responsible for review and appropriate action.

10. That the Formal Complaints of the Office of Consumer Advocate at Docket Nos. C-2023-3040845 (water), C-2023-3040846 (wastewater) and C-2023-3040847 (stormwater) be deemed satisfied and marked closed.

11. That the Formal Complaints of the Office of Small Business Advocate Docket Nos. C-2023-040785 (water) and C-2023-040780 (wastewater), and C-2023-3040789 (stormwater) be deemed satisfied and marked closed.

A P P E N D I X

List of Admitted Party Testimony, Exhibits, and Stipulations

Pa. Pub. Util. Comm'n et al v. Pittsburgh Water and Sewer Authority, R-2023-3039919, et al.

THE PITTSBURGH WATER AND SEWER AUTHORITY

Initial Filing - Rate Filing Package, dated May 9, 2023

- **Volume I:** Statement of Reasons, Customer Notice of Proposed Rate Changes and Filing Requirement, *with below referenced correction previously filed:*
 - Revised Schedule FR III.2 as filed June 22, 2023
 - Second Revised Schedule FR III.1 as filed July 12, 2023

Direct Testimony (dated 5/9/2023)

- PWSA St. No. 1 - Direct Testimony of William J. Pickering
 - Exhibits WJP-1, WJP-2
- PWSA St. No. 2 (as revised 9/6/23) - Direct Testimony of Edward Barca
 - Exhibits EB-1 to EB-9
- PWSA St. No. 3 -- Direct Testimony of William J. McFaddin
- PWSA St. No. 4 - Direct Testimony of Barry King
 - Exhibits BK-1 to BK-4
- PWSA St. No. 5 - Direct Testimony of Tony Igwe
 - Appendix A, TI-1 to TI-2
- PWSA St. No. 6 - Direct Testimony of Julie A. Mechling
 - Exhibits JAM-1 to JAM-16
- PWSA St. No. 7 - Direct Testimony of Harold J. Smith
 - Exhibits HJS-1 to HJS-2, HJS-1W to HJS-25W, HJS-1WW to HJS-24WW, HJS-1SW to HJS-13SW
- PWSA St. No. 8 - Direct Testimony of Keith Readling
 - Appendix A, KR-1 to KR-2
- PWSA St. No. 9 - Direct Testimony of Christine M. Fay
 - Appendix A, CF-1 to CF-9

Rebuttal Testimony (dated 9/8/2023)

- PWSA St. No. 1-R –Rebuttal Testimony of William J. Pickering
 - Exhibits WJP-3 to WJP-4

- PWSA St. No. 2-R – Rebuttal Testimony of Edward Barca
 - Exhibits EB-10 to EB-14
- PWSA St. No. 3-R – Rebuttal Testimony of William J. McFaddin
- PWSA St. No. 4-R – Rebuttal Testimony of Barry King
 - Exhibit BK-5
- PWSA St. No. 5-R – Rebuttal Testimony of Tony Igwe
 - Exhibits TI-3 to TI-7
- PWSA St. No. 6-R – Rebuttal Testimony of Julie A. Mechling
 - Exhibits JAM-17 to JAM-24
- PWSA St. No. 7-R – Rebuttal Testimony of Harold Smith
 - Exhibit A, HJS-1-R to HJS-2-R, HJS-1W-R to HJS-25W-R, HJS-1WW-R to HJS-24WW-R, HJS-1SW-R to HJS-13SW-R
- PWSA St. No. 8-R – Rebuttal Testimony of Keith Readling KR-3
- PWSA St. No. 9-R – Rebuttal Testimony of Christine M. Fay CF-10 to CF-13

Rejoinder Testimony (dated 9/29/2023)

- PWSA St. No. 2-RJ – Rejoinder Testimony of Edward Barca
 - Exhibit EB-15
- PWSA St. No. 4-RJ – Rejoinder Testimony of Barry King
- PWSA St. No. 5- RJ – Rejoinder Testimony of Tony Igwe
- PWSA St. No. 6- RJ – Rejoinder Testimony of Julie A. Mechling
- PWSA St. No. 8-RJ – Rejoinder Testimony of Keith Readling
 - Exhibits KR-4 to KR-5
- PWSA St. No. 9-RJ – Rejoinder Testimony of Christine M. Fay None

Additional Evidence

- PWSA Hearing Exhibit No. 1 – List of Testimony and Exhibits of PWSA
- PWSA Hearing Exhibit No. 2 – Joint Stipulation of PWSA and OCA

BUREAU OF INVESTIGATION AND ENFORCEMENT

Direct Testimony

- I&E Statement No. 1– Direct Testimony of I&E witness Anthony Spadaccio
 - I&E Exhibit No. 1
- I&E Statement No. 2– Direct Testimony of I&E witness Vanessa Okum
 - I&E Exhibit No. 2
- I&E Statement No. 3– Direct Testimony (Revised) of I&E witness Ethan Cline
 - I&E Exhibit No. 3

Surrebuttal Testimony

- I&E Statement No. 1-SR– Surrebuttal Testimony of I&E witness Anthony Spadaccio
 - I&E Exhibit No. 1-SR
- I&E Statement No. 2-SR – Surrebuttal Testimony of I&E witness Vanessa Okum
- I&E Statement No. 3-SR – Surrebuttal Testimony of I&E witness Ethan Cline

Verifications

- Verifications of Anthony Spadaccio, Vanessa Okum, and Ethan H. Cline

OFFICE OF CONSUMER ADVOCATE

Direct Testimony

- OCA St. 1: Direct Testimony of Dante Mugrace
 - Appendix A Resume of Dante Mugrace
 - Exhibits DM-1 through DM-21 along with a signed verification of Dante Mugrace
- OCA St. 2: Direct Testimony of Karl R. Pavlovic
 - Exhibits KRP-1 through KRP-7 with a signed verification of Karl R. Pavlovic
- OCA St. 3: Direct Testimony of Jerome D. Mierzwa
 - Exhibits JDM-1 through JDM-4 with a signed verification of Jerome D. Mierzwa
- OCA St. 4: Direct Testimony of Roger D. Colton
 - RDC-1 and RDC-2 with a signed verification of Roger D. Colton
- OCA St. 5: Direct Testimony of Barbara R. Alexander
 - Exhibits BA-1 through BA-5 with a signed verification of Barbara R. Alexander

- OCA St. 6: Direct Testimony of Terry L. Fought
 - Exhibits TLF- Vita and TLF-1 through TLF-25 with a signed verification of Terry L. Fought

Rebuttal Testimony

- OCA St. 2R: Rebuttal Testimony of Karl R. Pavlovic and a signed verification of Karl R. Pavlovic
- OCA St. 3R: Rebuttal Testimony of Jerome D. Mierzwa and a signed verification of Jerome D. Mierzwa
- OCA St. 4R: Rebuttal Testimony of Roger D. Colton and a signed verification of Roger D. Colton

Surrebuttal Testimony

- OCA St. 1SR: Surrebuttal Testimony of Dante Mugrace
 - Exhibits DM-SR 1 through DM-SR 3 with a signed verification of Dante Mugrace
- OCA St. 2SR: Surrebuttal Testimony of Karl R. Pavlovic
 - Exhibit KRP-SR with a signed verification of Karl R. Pavlovic
- OCA St. 3SR: Surrebuttal Testimony of Jerome D. Mierzwa and a signed verification of Jerome D. Mierzwa
- OCA St. 4SR: Surrebuttal Testimony of Roger D. Colton and a signed verification of Roger D. Colton
- OCA St. 5SR: Surrebuttal Testimony of Barbara R. Alexander
 - Exhibits BA-6 and BA-7 with a signed verification of Barbara R. Alexander
- OCA St. 6SR: Surrebuttal Testimony of Terry L. Fought
 - Exhibits TLF-1SR through TLF-3SR with a signed verification of Terry L. Fought

OFFICE OF SMALL BUSINESS ADVOCATE

- OSBA Statement No. 1 – Direct Testimony of Kevin Higgins
 - Exhibits KCH-1 through KCH-4 and signed verification
- OSBA Statement No. 1-R – Rebuttal Testimony of Kevin Higgins, signed verification
- OSBA Statement No. 1-S – Surrebuttal Testimony of Kevin Higgins and signed verification

PITTSBURGH UNITED'S OUR WATER TABLE

- Pittsburgh United Statement 1 – Direct Testimony of Harry S. Geller, Esq

- Exhibit 1, Projected Water / Wastewater Burdens, 2024
 - Exhibit 2, Projected Water / Wastewater Burdens, 2025
 - Exhibit 3, Projected Water / Wastewater Burdens, 2026
 - Appendix A: Resume of Harry S. Geller
 - Appendix B: Cited Discovery Responses
- Pittsburgh United Statement 1-R – Rebuttal Testimony of Harry S. Geller, Esq.
 - Pittsburgh United Statement 1-SR – Surrebuttal Testimony of Harry S. Geller, Esq.
 - Verification of Harry S. Geller, Esq.

SCHOOL DISTRICT OF PITTSBURGH

- School District Statement No. 1 – Direct Testimony of Michael J. McNamara
 - School District Exhibit MJM-1 (McNamara Resume)
 - School District Exhibit MJM-2
 - School District Exhibit MJM-3
- School District Statement No. 2 – Direct Testimony of Eric M. Callocchia
 - School District Exhibit EMC-1 (Eric M. Callocchia Resume)
 - School District Exhibit EMC-2
 - School District Exhibit EMC-3
 - School District Exhibit EMC-4
 - School District Exhibit EMC-5
 - School District Exhibit EMC-6
 - School District Exhibit EMC-7
 - School District Exhibit EMC-8
 - School District Exhibit EMC-9
- School District Statement No, 1-SR - Joint Surrebuttal Testimony of Michael J.McNamara and Theodore J. Dwyer, PhD
 - Appendix A (Resume of Theodore James Dwyer, PhD.)
- School District Statement No. 2-SR – Surrebuttal Testimony of Eric M. Callocchia
 - School District Exhibit EMC-10
- School District Hearing Exhibit No. 1 – Joint Stipulation of School District and the City

THE CITY OF PITTSBURGH

None

RIVER DEVELOPMENT CORPORATION*

None

*not represented by counsel at the evidentiary hearing.