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September 30, 2019

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

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

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

Dear Secretary Chiavetta:

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

Sincerely,

Daniel Clearfield

DC/lww
Enclosure

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

CERTIFICATE OF SERVICE

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

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Dated: September 30, 2019

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THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE PITTSBURGH WATER AND SEWER AUTHORITY

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Date: September 30, 2019

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I. INTRODUCTION AND SUMMARY OF REPLY BRIEF

The Pittsburgh Water and Sewer Authority ("PWSA" or "Authority") hereby submits this Reply Brief in response to the Main Briefs of the Commission's Bureau of Investigation and Enforcement ("I&E"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA") and Pittsburgh UNITED ("UNITED").[1] PWSA notes that PWSA's Statement in Support of the Joint Petition for Partial Settlement ("Partial Settlement" or "Joint Petition") is simultaneously being filed with the Commission.

In its Main Brief, PWSA anticipated and fully addressed many of the arguments in opposition to its recommended outcome and incorporates those arguments herein but offers this additional response to a few of the issues raised in the Main Briefs of the other parties. Specific issues that will be addressed in this Reply Brief include: 1) the Cooperation Agreement between PWSA and the City of Pittsburgh Effective January 1, 1995; 2) municipal properties and public fire hydrants within the City of Pittsburgh; 3) the applicability of the Municipal Authorities Act and the Commission's Line Extension Regulations; 4) PWSA's residency requirement; and 5) lead remediation.[2]

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1 PWSA notes that Pennsylvania-American Water Company (PAWC) submitted a letter confirming that PAWC did not file a Main Brief in this matter. http://www.puc.state.pa.us/pcdocs/1636941.pdf.

2 Many of the Main Briefs correctly provided that, as the proponent of its Compliance Plan and LTIIP filing, the Authority has the burden of proving that its proposals will result in PWSA providing adequate, efficient, safe, reliable and reasonable service. The Main Briefs submitted by the other parties, however, failed to explain that PWSA does not have the burden of proof as to any proposals presented by other parties that were not included in PWSA's filings. Rather, the proponent of said proposals bears the burden in those cases to demonstrate that its proposal(s) will result in PWSA providing adequate, efficient, safe, reliable and reasonable service. *See* PWSA M.B. at 9-10.

As a general response to the inferences that the Authority's proposals do not appropriately prioritize the interests of PWSA's ratepayers,[3] it is worth highlighting that the Authority is committed to providing safe and adequate water and wastewater service at reasonable rates to all customers. As the Authority stated in its Main Brief, the Authority seeks to establish a reputation for being a highly responsive and trusted public utility, recognized for excellence and valued by the community and its customers. The Authority is committed to achieving full compliance with applicable law and the regulations of the Pennsylvania Public Utility Commission ("Commission" or "PUC").

Contrary to the assertions raised by other parties, in developing its plan for full compliance of Chapter 32,[4] the Authority did not prioritize its own interests or those of the City of Pittsburgh, nor did the Authority prioritize the interests of residential customers above those of non-residential customers. Rather, the development of the Authority's Compliance Plan proposal required a thorough evaluation of all interests involved. Additionally, the Authority considered its then-current operational status and the condition of its equipment and facilities,[5] its future goals and legal mandates, and the resources available to accomplish these goals. These considerations included, among other things, the Authority's Cooperation Agreement with the

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3 *See e.g.* I&E M.B. at 3 (providing that the Authority has elevated the interests of the City above its own ratepayers); United M.B. at 3 (arguing that the Authority's lead service line replacement proposal does not satisfy PWSA's obligation to provide safe service to its customers); OSBA M.B. (suggesting that the Authority's lead line replacement proposal discriminates against non-residential customers).

4 66 Pa.C.S. § 3201, *et seq.*

5 To the extent other parties make allegations related to PWSA's pre-regulation operations or decisions, the Authority submits that such allegations are not relevant to this proceeding, except to the extent of understanding the current condition of PWSA's operations and facilities and evaluating the Authority's proposed plan going forward. The Authority does not deny that prior conditions previously prevented the proper operation and maintenance of the Authority's water and wastewater operations. The Authority's silence on any specific allegations that are not relevant to this proceeding should not be interpreted as the Authority agreeing to the characterization of said allegations.

City of Pittsburgh, the ability of the City and other ratepayers to fund certain aspects of the Authority's Long Term Infrastructure Improvement Plan ("LTIIP"), the timeframe and resources available to make system upgrades and improvements necessary to comply with Pennsylvania law and Commission regulations, and the priority that should be given to these system upgrades and improvements. It was consideration of these factors that drove PWSA's positions in this proceeding, not some perceived "bias" in favor of the City of Pittsburgh.

Importantly, Chapter 32 does not require that PWSA come into immediate compliance with the Code and Commission regulations and Orders, nor would such a requirement be feasible. As I&E acknowledged in its Main Brief, "PWSA's transition to Commission jurisdiction is a vast and complex undertaking that undoubtedly requires prioritization and devotion of resources and redevelopment of operations."[6] Importantly, PWSA has come to agreements on compliance with the vast majority of issues raised by the parties, the best evidence of the Authority's sincere desire to cooperate with the Commission and to become "PUC-compliant." It is neither reasonable nor supportable to suggest otherwise merely because PWSA and the parties could not agree on a handful of issues.

However those few remaining issues are resolved, PWSA's plan is designed to achieve full compliance in an efficient and effective manner and to ensure that PWSA has a reasonable amount of time and resources available to achieve these goals. As discussed in more detail below, PWSA's proposals will result in full compliance with applicable law and Commission regulations and Orders and will result in PWSA providing adequate, efficient, safe, reliable and reasonable service. For the reasons stated both here as well as in its Main Brief and in the Partial

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6 I&E M.B. at 17.

Settlement (together with the related statements in support of the Partial Settlement), the Authority respectfully requests that the Administrative Law Judges ("ALJs") issue a Recommended Decision approving PWSA's Compliance Plan, as modified by PWSA's positions and recommendations in this proceeding.

II. PWSA REPLY TO ARGUMENTS OF OTHER PARTIES

A. THE COOPERATION AGREEMENT BETWEEN PWSA AND CITY OF PITTSBURGH EFFECTIVE JANUARY 1, 1995

PWSA and the City have been negotiating a new Cooperation Agreement to replace the 1995 Cooperation Agreement, which was amended on March 21, 2011. The objective of the negotiations, from PWSA's perspective, is to obtain terms that require annual payments to reflect actual services being provided and the fair market value of those services. When the 2019 Cooperation Agreement is approved by PWSA and the City, PWSA will file it with the Commission for review under Section 507 of the Public Utility Code[7] to determine its reasonableness, legality and validity. When filing the 2019 Cooperation Agreement, PWSA will request that the Commission authorize it to immediately begin operating under those terms, subject to retroactive modifications.[8]

I&E maintains that PWSA is non-compliant with Chapter 32 until the 1995 Cooperation Agreement is terminated and the Commission has either approved a new Cooperation Agreement or PWSA is transacting with the City on an arm's-length, as-needed basis. Because the 1995 Cooperation Agreement has been extended during this proceeding while negotiations are ongoing, I&E argues that the Commission should not allow it to be extended again beyond

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7 66 Pa.C.S. § 507.

8 PWSA M.B. at 15-17.

October 3, 2019. In I&E's view, PWSA should begin operating on a business-like basis with the City as soon as possible.[9]

When PWSA files the 2019 Cooperation Agreement, it plans to request that the Commission permit it to immediately being operating under those terms, subject to subsequent retroactive revisions and future Commission determinations regarding the impact on rates. This approach would be more structured and transparent than simply operating on a business-like basis. As of this date, the 1995 Cooperation Agreement will be terminated on October 3, 2019. Therefore, it is premature to debate the issue of whether PWSA should be able to extend the 1995 Cooperation Agreement again. Also, a final Commission Order is not expected to be issued until February 2020. If another contract extension occurs, and I&E wishes to challenge that, it will need to do so through a separate proceeding.

B. MUNICIPAL PROPERTIES AND PUBLIC FIRE HYDRANTS WITHIN THE CITY OF PITTSBURGH

Although issues related to receiving payment from the City regarding the metering of municipal properties, usage, and the costs of public fire hydrants are all part of the discussions between the City and PWSA as they move forward to finalize (and submit to the Commission for approval) a new City Cooperation Agreement,[10] I&E takes the position that the Commission should resolve these matters now consistent with I&E's views in this proceeding. Accordingly, I&E advocates that the Commission should prohibit PWSA from receiving any payment from the City for meter installations.[11] Though taking a stringent "no payment" view on City meter installation costs, on the other issues I&E advocates that PWSA should be ordered to demand

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9 I&E M.B. at 29-32.

10 PWSA M.B. at 23-24.

11 I&E M.B. at 36.

full payment from the City for: (1) the usage of newly installed meters; and, (2) the to-be approved percent allocation of costs of public fire hydrants.[12] While OCA does not take a position regarding the costs of meter installation or public fire hydrant costs, both advocate for the immediate introduction of a new flat fee for all unbilled City properties, while I&E advocates that a full flat rate be implemented as part of PWSA's next rate case.[13]

As explained further below, requiring PWSA to demand payment from the City does not mean that the City is actually in a position to pay. The reality is that ordering the City water usage to be immediately subject to charges, rather than the more realistic and reasonable "transitional" payment plan approach advocated by PWSA (and likely to be reflected in the new version of the Cooperation Agreement) does nothing to address the root of I&E's concern, i.e. that PWSA will receive full payment for services rendered. Regarding the proposals for implementation of a flat rate for unbilled municipal properties, PWSA has agreed to further evaluate this proposal in advance of its next rate case. Thus, rather than directing PWSA to take actions that may have little chance of resolving the City nonpayment issues any more quickly, the wiser course is to determine that the transitional payment plan presented by PWSA in this proceeding is reasonable while recognizing that the ultimate result of the PWSA/City negotiations is subject to further review when the new Cooperation Agreement is filed with the Commission.

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12 I&E M.B. at 42.

13 I&E M.B. at 43; OCA M.B. at 10-14.

1. Reply to I&E Regarding Meter Installation Costs and Public Fire Hydrants

a. City's Status and Relationship with PWSA

The recurring theme underlying all of I&E's positions is that the City is "no different" from any other customer and must be treated the exact same way as soon as possible.[14] I&E gives no weight or consideration to the historical relationship of these two entities. The City created PWSA, and still owns the assets (which it leases to the Authority until 2025). Most importantly, in the current agreement with the City (which is in the process of being renegotiated), the City enjoys certain privileges of ownership, including the right to receive up to 600 million gallons of water without charge.[15] Thus, the nature of the relationship and the ownership of the assets is a fact that needs to be taken into account when addressing the issues in this proceeding. I&E also fails to recognize that the City is a governmental body, meaning that it is not like commercial enterprises that are utility customers. Rather than acknowledging that these realities directly impact the ability of PWSA to receive actual payments from the City for services rendered, I&E defaults to claiming that PWSA has not supported its proposals and criticizing PWSA for being overly concerned about the City.[16] I&E's advocacy, which fails to account for the nature of the relationship between these two entities, must be rejected by the

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

15 *See* I&E M.B. at 22.

16 I&E M.B. at 41.

Commission because it offers no realistic way in which to ensure that PWSA will actually receive any payment from the City.

In contrast, each one of PWSA's proposals creates a pathway to receive some payments now and to move to full payments from the City over time. Importantly, the City is agreeing to make these payments. Securing the agreement and cooperation of the City (subject to ultimate Commission approval) is a reasonable way to proceed because it will ensure the success of the ultimate goal, i.e. the City will transition to paying fully for services rendered. Demanding – on one hand – that PWSA refuse payment from the City for a portion of meter installation costs while – on the other hand – that PWSA immediately begin seeking payment for water usage makes no sense and does nothing to guarantee that PWSA will receive any payments. There would be little recourse to PWSA from issuing bills to the City that go unpaid given the potential impact of terminating water service to essential governmental services and scores of municipal facilities. Thus, the end result of adopting I&E's positions would be to increase PWSA's uncollectible expense and thrust PWSA and the Commission into protracted legal wrangling, the cost of which all PWSA's ratepayers will be required to bear.

I&E characterizes PWSA's concerns about increasing its uncollectible expense due to a lack of City payments as "troubling and misplaced" because, according to I&E, there is "no evidence that the City would be unable to pay bills" and the "City is a sophisticated entity…fully capable of making the arguments PWSA made on its behalf."[17] These claims ignore reality.

Of course utilities should be concerned about the ability of their ratepayers to pay because it impacts the revenues that the utilities are able to realistically depend on receiving,

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17 I&E M.B. at 41.

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

While the City is not a low income customer, neither is it a "traditional" commercial customer. The City does not, like other private and public companies, engage in the exchange of goods or services for money and does not have shareholders and/or profits available from which to meet payment obligations. Rather, the City is a local governmental body that exists for the purpose of providing public services for its residents and is dependent on paying its financial obligations through taxes and other fees received from its residents. Pittsburgh has only in 2018 terminated its status as a financially distressed city under the direction of a state-appointed coordinator under "Act 47."[18] This means that imposing what could be a substantial new obligation on the City, essentially without notice or any ability for the City to plan and to incorporate the new financial obligations into its budget, almost certainly will result in an inability of the City to pay, until (or if) it could increase taxes to pay for these totally new charges.[19] Also of importance to remember is that many of the City's residents are also PWSA's ratepayers – and many of them are lower or moderate income – meaning that increasing City taxes and fees may directly impact their ability to pay PWSA.

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

19 PWSA M.B. at 23, 28; PWSA St. C-1 (Weimar) at 27; PWSA St. C-1R (Weimar) at 21.

Recognizing these realities and determining how to work with them to achieve the ultimate goal of ensuring payment for services rendered is not "misplaced" nor unreasonable and most certainly does not – as I&E alleges – evidence a lack of focus by PWSA "on ensuring the integrity of its operations and providing adequate, efficient, safe, reliable and reasonable service."[20] Rather, these realities fully support PWSA's view in this proceeding that the current proposals that have been negotiated between the City and PWSA are a far more reasonable path forward because they reflect an agreement with the City and assure some immediate payments with a plan for transitioning to full payments in the near future (within five years).

b. City Payment of Meter Installation Costs

Despite claiming to be an advocate for full payment now by the City for all usage, I&E lambasts the proposal (as negotiated with the City) that the City share the costs of metering municipal properties on a 50/50 basis.[21] According to I&E, PWSA has not provided "an adequate basis why the City should be charged for costs related to metering generally" and PWSA has no choice pursuant to 52 Pa. Code § 65.7 but to fully absorb the costs of installing meters to City properties. I&E's position must be rejected for several reasons.

First, as explained in the previous section, the City is <u>not</u> like every other customer, and securing its agreement to share in these costs is reasonable. Such agreement ensures that payment will actually be received to address the underlying concerns related to the current relationship, whereby the City is not paying for services rendered. PWSA submits that this is a good result, consistent with the overall goal and should be adopted.

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20 I&E M.B. at 41.

21 I&E M.B. at 33-36.

Second, I&E's view that PWSA is prohibited from accepting any payment from the City in violation of 52 Pa. Code § 65.7(b) is not correct. Prior to coming under the jurisdiction of the Commission, PWSA assessed customers' charges for new meters.[22] PWSA's current Commission-approved tariff permits it to continue to assess these charges by requiring new customers to pay a "Customer Facilities Fee" which includes charges for the meters and equipment, the remote reading devises and their installation.[23] The Commission approved PWSA's tariff as part of PWSA's rate case, and PWSA's tariff became effective on March 1, 2019.[24] Thus, the Commission has authorized PWSA to assess a fee for new meter installation as the Commission has the discretion to do pursuant to 52 Pa. Code § 65.7(b).

Finally, I&E claims that accepting payment from the City for 50% of the costs of installing new meters is "unreasonable discrimination in rate making" in violation of 66 Pa. C.S. § 1304.[25] According to I&E, PWSA has not explained why its plan with the City should not apply to all unmetered properties, and many other utilities could claim that a lack of payments would result in reduced investments in other critical projects and high risk priorities.[26] However, PWSA has repeatedly explained why the City is not like any other customer and why securing agreement from the City to share in the costs of meter installations is a reasonable approach to

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22 PWSA Official Prior Tariff, Rule 305 at 3-6 as filed at PaPUC Docket No. M-2018-2640802. PWSA's Official Prior Tariff was effective prior to coming under the Commission's jurisdiction through March 1, 2019 and is available at: http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=M-2018-2640802.

23 PWSA Tariff Water – Pa. P.U.C. No. 1, Part III, Section D.5, D.9 and Section G.2 at pages 42, 43, and 49.

24 *Pennsylvania Public Utility Commission, et. al v. Pittsburgh Water and Sewer Authority*, Docket No. R-2018-3002645, Secretarial Letter dated March 6, 2019 approving Original Tariff Water.

25 I&E M.B. at 36.

26 I&E M.B. at 36. Note that per the Partial Settlement, PWSA will pay for the meter and meter installation for non-municipal properties. If approved, PWSA will revise the appropriate section of its tariff as part of the compliance filing. Joint Petition § III.G.2.a at 22.

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

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

c. Billing Plan for Public Fire Hydrants

PWSA has committed to presenting a rate design reflecting allocation of 25% of the costs of public fire hydrants to the City in the next rate case and has reserved the right to propose a phase-in period at that time.[27] Despite this, I&E opposes any type of "step-billing approach for City public fire hydrant charges" and recommends that the Commission direct PWSA to charge the City "the full amount of whatever percent allocation is determined in PWSA's next rate proceeding."[28] While I&E opposes any type of step-billing approach related to City public fire hydrant charges, that approach is not before the Commission at this time. Although the new City

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27 PWSA M.B. at 29, Joint Petition § 111.I.1 at 19.

28 PWSA M.B. at 29.

Cooperation agreement that is under negotiation with the City would phase-in the public fire hydrant costs similar to the phase-in proposed for City water usage once meters are installed, that agreement needs to be presented to the Commission for review and final approval. Additionally, as agreed to in the Partial Settlement, PWSA's proposed allocation of costs to the City will be presented as part of its next rate case. As such, approval of the Partial Settlement regarding this issue is all that needs to occur at this time, and I&E's position about what the Commission should do in a future rate case must be rejected.

2. Reply to I&E and OCA Regarding Billing Plan for Unmetered/Unbilled Municipal Properties

PWSA proposed a transition plan to ultimately achieve full payment by the City for usage at all meter properties which involves: (1) identifying and installing meters at unmetered properties; and, (2) billing all metered properties with the agreement from the City that it would start paying for usage at a specific percentage until that percentage reaches 100%.[29] In response, both I&E and OCA advocate that PWSA should introduce a "flat rate" billing plan for those City properties where meters are not currently installed rather than folding them into the transitional payment plan.[30] While OCA does not oppose the transitional payment plan for newly metered properties, its agreement is conditioned on the implementation of a flat-rate charge based on the size of the service line serving the property that would approximate the then-applicable percentage step of the average bill of metered customers with similar-sized service lines.[31] I&E opposes the transitional payment plan for newly metered properties and advocates for the

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29 PWSA M.B. at 26-27.

30 I&E M.B. at 41-43; OCA M.B. at 13-15.

31 OCA M.B. at 13-14.

implementation of a flat rate (set at the minimum customer charge for the customer's class) for all unbilled properties as part of PWSA's next base rate case.[32]

For all the reasons discussed above in Section II.B.1.a, securing the City's agreement to begin paying for usage at properties where it has never paid before (whether that property is metered or not) is a complicated issue that needs to be handled in a thoughtful and reasoned manner. As such, directing PWSA to impose a flat rate on City properties immediately will likely result in unpaid charges that PWSA will be unable to collect, leading to an increase in PWSA's uncollectible expense that all PWSA's ratepayers will be forced to bear.[33] Given the dynamics of the City, its relationship to PWSA and the on-going negotiations of a new Cooperation Agreement that will be subject to Commission review, PWSA has well demonstrated why the Commission must reject I&E's view that simply directing PWSA to issue bills to the City will result in PWSA actually receiving these payments.

Moreover, while OCA points to the existence of a flat rate in PWSA's Commission-approved tariff, OCA's proposal would still require PWSA to figure out how to estimate usage at unmetered properties to calculate the bill. Such estimates are difficult due to the significant amount of unmetered properties, the presence of numerous derelict properties that will be torn down, the fact that water line size in not necessarily indicative of use and the non-homogeneous nature of municipal buildings.[34] Any methodology that PWSA develops needs to be defensible and equitable. Due to these complexities, and in consideration of the most direct path forward, PWSA's proposed transitional payment plan for all City meters and its commitment to

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32 I&E M.B. at 43.

33 PWSA M.B. at 28; PWSA St. C-1R (Weimar) at 21.

34 PWSA M.B. at 27-28; PWSA St. C-1 (Weimar) at 22, 28.

evaluating the proposal for a flat rate for all unmetered and unbilled municipal and governmental properties/buildings served by PWSA prior to the next rate case is appropriate.[35]

C. APPLICABILITY OF THE MUNICIPALITY AUTHORITIES ACT, 53 PA.C.S. § 5601, ET. SEQ., AND THE COMMISSION'S LINE EXTENSION REGULATIONS AT 52 PA.CODE §§ 65.1, 65.21-65.23

Only I&E expressly opposed[36] the continued applicability of the statutory line extension mandates in the Municipal Authorities Act ("MAA")[37] to PWSA. In its Main Brief, I&E opposes the continued application of the statutory mandates and favors the application of the Commission's line extension regulations.[38] For the following reasons, I&E's positions on this issue are fundamentally flawed and must be rejected.

First, I&E concedes that statutes always supersede administrative regulations.[39] Here, there is an inherent conflict between the statutory line extension mandates in the MAA[40] and the Commission's "line extension" regulations.[41] I&E concedes, as it must, that if the conflict is

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

36 I&E M.B. at 45-57. The other active parties did not address this issue in their Main Briefs. *See* OCA M.B. at 14; OSBA M.B. at 8; UNITED M.B. at 18; and PAWC's letter confirming that PAWC did not file a Main Brief in this matter.

37 I&E M.B. at 45-57.

38 52 Pa.Code §§ 65.1-65.22.

39 I&E M.B. at 48, *citing Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa.Super. 2002) (holding that statutes always supersede administrative regulations).

40 *See* 53 Pa.C.S. §§ 5607(a), (d), (d)(21)-(24), and (d)(30)-(31). I&E states that these provisions, in particular, Section 5607(d)(24), tightly control what can be charged for certain fees under the MAA. I&E Main Brief at 53. Those provisions, when read in context, do more than that: They **expressly mandate** that municipal authorities must act in (or refrain from acting in) certain ways. They are part of the powers (ability to act) delegated to them by the General Assembly.

41 *See* I&E M.B. at 46, fn. 141, which refers to the Directed Questions related to the appropriateness of PWSA following the provisions of the MAA in lieu of the Commission's regulations on line extensions, customer advance funding, and refunds. *See* PWSA Exh. RAW/C-1, Directed Questions 44-47.

viewed as being between the MAA and the Commission's regulations, then the mandates in the MAA would prevail over the Commission's regulations.[42] This concession should end the analysis of this issue, since that is the exact circumstance presented here. Accordingly, the ALJs and the Commission should enter a determination that it is legally necessary for PWSA to follow the statutory line extension formulas in the MAA in lieu of the line extension formula in the Commission's regulations.

Second, to avoid the results of the above-described concession, I&E engages in a misdirection that should be disregarded. I&E emphasizes that PWSA is subject to the majority of the chapters of Public Utility Code[43] **and** the Commission's regulations and orders.[44] By doing so, I&E states that the issue to be decided is whether Chapter 32 of the Public Utility Code requires PWSA to follow the Commission's regulations, instead of the statutory provisions of the MAA.[45] However, that "issue" does not present an actual conflict between the statutes (MAA versus Public Utility Code/Chapter 32). The conflict presented by that issue is still between

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42 I&E M.B. at 48.

43 I&E M.B. at 50-51; s*ee also* footnote 64.

44 I&E explains that compliance with the Public Utility Code requires compliance with the regulations and orders of the Commission. *See* I&E M.B. at 49, *citing* 66 Pa.C.S. § 501(c) ("Every public utility…subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof") and 66 Pa. C.S. § 1501 ("[A public utility's] service and facilities shall be in conformity with the regulations and orders of the commission"). I&E correctly notes that there are conflicts between certain statutory provisions in the MAA and certain statutory provisions in the Public Utility Code. *See* I&E M.B. at 53. Those conflicts do not resolve the issue presented by the line extension provisions. To explain in greater detail: 53 Pa.C.S. § 5607(d)(9) presents a statutory conflict between the MAA and the Public Utility Code. *See* I&E M.B. at 53. Section 5607(d)(9) of the MAA provides, *inter alia,* that a municipal authority has the exclusive jurisdiction to determine its own rates for service and that challenges to those rates must be brought in the applicable Court of Common Pleas. *See* 53 Pa.C.S. § 5607(d)(9). Those provisions conflict with statutory provisions in the Public Utility which provide, *inter alia,* that the Commission sets the rates and that challenges to Commission-made rates must be brought before the Commission. *See, e.g.,* 66 Pa.C.S. §§ 701, 1301-1130. Despite I&E's positions to the contrary, such statutory conflicts do not establish that the Commission's regulations or orders supersede statutory provisions in the MAA.

45 I&E M.B. at 48-49, 52.

provisions in statute, the MAA, and the Commission's regulations. So, despite the attempt at misdirection, I&E's real position is that the Commission's regulations supersede the statutory provisions in MAA.[46] It follows that the analysis of this issue should end based on (i) the lack of conflict between statutes,[47] (ii) the above-described concession by I&E, and (iii) the reasons stated in Section V.C of PWSA's Main Brief. Accordingly, as stated above, it is necessary and appropriate for PWSA to continue to follow the statutory line extension mandates in the MAA.

Third, notwithstanding the forgoing, I&E incorrectly argues that that it is not possible for the MAA to coexist with Chapter 32.[48] This argument is based on a misreading of the General Assembly's intent. I&E incorrectly states that the General Assembly's intent in enacting Chapter 32 was to mandate that PWSA be "treated" like any other jurisdictional utility without regard for any provision in PWSA's enabling legislation, the MAA.[49] However, as explained in PWSA's Main Brief, that statement of the General Assembly's intent is not correct.[50] Contrary to I&E's positions, nothing in Chapter 32 evidences a clear intent for the Commission's regulations and orders to supersede all of the statutory provisions in the MAA.[51] In addition, to the extent that

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46 *See* I&E M.B. at 52. It is of no consequence that the Commission's regulations purport to be mandatory. *Id.* As noted, statutes always supersede administrative regulations. *See* footnote 42.

47 Only when the words of the statute are not explicit may the court resort to statutory construction. 1 Pa.C.S. § 1921.

48 I&E M.B. at 49. I&E states that no provision within the MAA binds the General Assembly from adopting contrary legislation. I&E M.B. at 53. That is statement is correct, as far as it goes. But, that statement does nothing to show an actual conflict between any statutory provision in the MAA and any statutory provision in the Public Utility Code.

49 *See* I&E M.B. at 50-51, 52, 55.

50 PWSA M.B. at 45-47.

51 *Id.*; *see also* footnote 42. As stated in PWSA's Main Brief: If the General Assembly's intent was to mandate compliance by PWSA with each and every provision in the Public Utility as well as all regulations, the General Assembly would not have expressly included a waiver provision in Chapter 32. *See* 66 Pa.C.S. § 3202(b). Nor would the General Assembly have stated the PWSA's Compliance Plan should address compliance with the applicable rules, regulations and orders of the Commission. 66 Pa.C.S. § 3204(b). By including such provisions in Chapter 32, the General Assembly affirmatively recognized that PWSA must continue to comply with its enabling legislation.

I&E takes the position that Chapter 32 repeals (or supersedes) the MAA, those positions are refuted by the lack of either an express or implied repeal of the MAA (in its entirety[52]) by Chapter 32 and the lack of an express or implied repeal by Chapter 32 of the relevant statutory "line extension" related mandates in the MAA, as explained in PWSA's Main Brief.[53]

Fourth, I&E reliance[54] on the principle that a particular statute controls over a general statute[55] is misplaced. Statutory construction requires a conflict between statutes (MAA versus Public Utility Code/Chapter 32).[56] Here, the particular statutory provisions are in the MAA, and there are only general statutory provisions in the Public Utility Code. It is not disputed that the MAA contains specific statutory provisions on line extensions. Neither Chapter 32[57] nor the Public Utility Code[58] contain specific statutory provisions on line extensions. Therefore, the above-stated principle of statutory construction actually supports PWSA's position that it is necessary and appropriate for PWSA to continue to follow the statutory line extension mandates in the MAA.

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52 Nothing in Act 65 expressly repeals any statute. *See* Act 65. The well-established principles regarding implied repeal are set forth in the Statutory Construction Act. 1 Pa.C.S. § 1971; PWSA M.B. at 41-42.

53 PWSA M.B. at 41-42.

54 I&E M.B. at 49-51.

55 1 Pa.C.S. § 1933. That provision states: "Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail." *Id.*

56 *See* 1 Pa.C.S. § 1501, *et seq.*; PWSA M.B. at 30-49; *see also* footnote 42.

57 *See* 66 Pa.C.S. § 3201-3209; PWSA M.B. at 36-37. In fact, I&E describes Chapter 32 as mandating compliance with the Public Utility Code generally. I&E M.B. at 49.

58 *See* PWSA M.B. at 36-37; *see also* footnote 66, which contains I&E description of the relevant general requirements of the Public Utility Code.

Fifth, I&E's positions are not supportable under the principles of statutory construction, since they would create absurd results.[59] I&E acknowledges that Chapter 32 — which placed the "public utility" operations of PWSA under the oversight and jurisdiction of the Commission[60] – did not change PWSA's status as a municipal authority.[61] I&E further acknowledges that the MAA provides certain powers that a municipal authority, such as PWSA, may exercise.[62] Simply put, as explained in PWSA's Main Brief, in certain areas the General Assembly has **expressly mandated** that PWSA (and every other municipal authority) must act in (or refrain from acting in) certain ways.[63] However, I&E incorrectly opines that the Commission's oversight and jurisdiction over PWSA is "supreme" over any statutory provision in the MAA.[64] Stated otherwise, I&E's ultimate position is that the MAA is no longer applicable when there is a "conflict" between any statutory provision in the MAA with any of the Commission's

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59 *See* 1 Pa.C.S. § 1922(1), (2). In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used: (1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable. (2) That the General Assembly intends the entire statute to be effective and certain. *Id.*

60 Act 65 establishes that the Public Utility Code shall apply to PWSA in the "same manner as a public utility." 66 Pa.C.S. § 3202(a)(1).

61 I&E M.B. at 54 (emphasis added).

62 I&E M.B. at 45, *citing* 53 P.S. § 5607(d). Section 5607(d) of the MAA begins as follows: "Every authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section, including, but without limiting the generality of the foregoing, the following rights and powers. …"

63 53 Pa.C.S. § 5607(d)(24)("Every authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section, including, but without limiting the generality of the foregoing, the following rights and powers: … (24) To charge enumerated fees to property owners who desire to or are required to connect to the authority's sewer or water system. …"). Please note this quotation does not repeat the statutory formulas and limitations within 53 Pa.C.S. § 5607(d)(24). In addition, municipal authorities may levy and enforce special assessments against properties served. 53 Pa.C.S. §§ 5607(d)(21)-(22); PWSA St. C-4 (Quigley) at 31-32.

64 I&E M.B. at 53-55. That being said, I&E acknowledges there are limitations on the Commission's oversight and jurisdiction. *Id., citing* 66 Pa.C.S. §§ 3202(a)(application of Public Utility Code) and 3208 (power of authority regarding powers and functions, audits, and securities of an authority).

regulations and orders.[65] The acceptance of the above-described positions of I&E means that the Commission may – by regulation or order[66] – direct PWSA to perform an action (such as charge a fee/rate) that PWSA is not legally able to do (or charge) on its own. This means the Commission would be able to negate the application of any statutory provision in the MAA regarding PWSA. That would also be an absurd result, which would violate and the principles of statutory interpretation[67] and would, in effect, enable the Commission to rewrite the MAA as applied to PWSA.

Sixth, I&E is wrong with regard to the consequences of PWSA's continued compliance with the statutory line extension mandates in the MAA. I&E argues that there will be "administrative hardship" for the Commission if PWSA, the only municipal authority regulated by the Commission, is given different treatment from other public utilities regulated by the Commission.[68] That alleged hardship stems from the assumed lack of the Commission's ability to interpret or enforce the statutory mandates in the MAA.[69] However, as explained in PWSA's Main Brief,[70] there is nothing inherently inconsistent in the statutory mandates in the MAA and statutory mandates in the Public Utility Code.[71] So, if the Commission adopts the statutory

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65 *See* I&E M.B. at 54 stating that "I&E does not dispute the MAA still applies to PWSA when not in conflict with Chapter 32['s requirement] … that PWSA is to regulated under … the Commission's rules, regulations and orders as though it were [a] public utility."

66 I&E explains that compliance with the Public Utility Code requires compliance with the regulations and orders of the Commission. *See* I&E M.B. at 49, *citing* 66 Pa.C.S. § 501(c) ("Every public utility…subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof") and 66 Pa. C.S. § 1501 ("[A public utility's] service and facilities shall be in conformity with the regulations and orders of the commission").

67 *See* 1 Pa.C.S. §§ 1922(1), (2).

68 I&E M.B. at 54-55.

69 *Id.*

70 PWSA M.B. at 39-41.

71 *See* 66 Pa.C.S. § 1301 (relating to just and reasonable rates).

mandates in the MAA as the "rules" applicable to PWSA, the Commission would be able to interpret and enforce these "rules" as adopted by the Commission.[72]

Finally, PWSA submits that, if necessary and appropriate, the Commission can grant a waiver of the Commission's regulations. I&E asserts that PWSA is not entitled to a waiver of the Commission's line extension regulations.[73] I&E is wrong. It is PWSA's position that if the Commission finds that the Authority is bound by PUC Line Extension Regulations, it should waive compliance with the formula in the Commission's regulation.[74] This could be done in this proceeding.[75] Alternatively, as a part of this proceeding, the Commission could direct PWSA to seek a formal waiver in a subsequent filing (as a part of PWSA's transition to full compliance).

D. PWSA'S RESIDENCY REQUIREMENT

PWSA has acknowledged that the residency requirement makes it challenging to fulfill its obligations under the Public Utility Code. However, PWSA also explained the steps it is taking to address these challenges. Those measures include efforts to stabilize the workforce through the hiring of permanent workers, engaging consultants, and temporarily hiring project

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72 *See, e.g.,* 52 Pa.Code § 59.33, which provides precedent of incorporating a federal regulatory framework into the Commission's regulations and includes a mechanism for adopting future changes to the federal rules; 52 Pa.Code § 29.402, requiring that vehicles of common carriers or contract carriers comply with applicable Department of Transportation equipment inspection standards as set forth in 67 Pa. Code Chapter 175 (relating to vehicle equipment and inspection) at all times when the vehicle is being operated. *See also Harrisburg Taxicab & Baggage Co. v. PUC*, 786 A.2d 288, 293 (Pa.Cmwlth. 2001), wherein the Commonwealth Court approved the Commission's incorporation of PennDOT vehicle safety regulations into the Commission's regulations because the incorporation harmonized the overlapping jurisdiction of the Commission and PennDOT over vehicle safety.

73 I&E M.B. at 55-57.

74 PWSA M.B. at 47-49.

75 I&E asserts that a waiver would be inappropriate because PWSA has not formally petitioned for such a waiver (I&E M.B. at 55-57) but the entire purpose of this Compliance Proceeding is to determine how and to what extent PWSA should be required to adhere to PUC rules and regulations, thus no separate "petition" is necessary.

managers who do not reside in the City and seeking to convert them to permanent employees (i.e., having individuals establish domicile within the City limits within 6 months). Also, under PWSA's domicile policy, the Executive Committee can exempt employees from this requirement.[76]

I&E contends that the residency requirement hinders PWSA's ability to comply with its obligations under the Code, Commission regulations and orders. Therefore, I&E recommends that the Commission direct its elimination.[77]

As PWSA has previously noted, the Commission's ability to eliminate the residency requirement is limited to situations in which it determines that PWSA's policy is causing it to be out of compliance with the Public Utility Code or Commission regulations by providing inadequate service or tending to make PWSA's rates unreasonably high. Only if the Commission finds that the residency requirement is causing PWSA to be out of compliance with a statutory provision or regulation is it empowered to direct its elimination. PWSA concedes that the record here supports a Commission finding that the residency requirement is increasing costs to PWSA and impeding its ability to provide adequate and efficient service.

E. LEAD REMEDIATION ISSUES

1. Replacement of Private-Side Lead Services Lines Not Scheduled For Replacement Through PWSA's Current Lead Service Line Replacement Programs

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76 PWSA M.B. at 47-49.

77 I&E M.B. at 57-67.

a. Income-Based Reimbursement for Private-Side Service Line Replacements Initiated by Property Owner

I&E, OCA and UNITED oppose a program set forth in PWSA's July 2019 Lead Service Line Replacement Program Policy to reimburse residential customers when they elect to replace their line on their own, using an income based sliding scale.[78] These arguments should be rejected for three overarching reasons. First, none of these parties' acknowledge that, since lead remediation is a water quality issue, the Commission is without jurisdiction to order PWSA to take steps in this area. The only reason to remove a private-side lead service line is to address the public health issue of making the customer's water quality acceptable (i.e., to ensure that the customer's water does not have an unacceptable level of lead in it). If lines containing lead did not impact the level of lead in tap water, there would be no reason to remove them. Thus, the level of lead in tap water is plainly a "water quality" issue that is clearly within the province of the Pennsylvania Department of Environmental Protection ("PADEP") to regulate – not the Commission. Numerous PUC and court decisions plainly establish that jurisdiction to regulate and direct actions to address water quality issues rests with the PADEP. [79]

The other parties hardly address this fundamental problem with their arguments. UNITED simply makes the unsupported claim that the Commission has the authority to take steps to ensure that customers are not drinking lead-contaminated drinking water.[80] This

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78 I&E M.B. at 74-94; OCA M.B. at 19-20; UNITED M.B. at 26-36. OSBA took no position on this issue but believes the if the Commission determines that PWSA's LSLR Policy should be extended to non-residential customers and that the income-based reimbursement program is appropriate for residential customers, that non-residential customers should be eligible to receive a $1,000 stipend as opposed to the income-based schedule. OSBA M.B. at 8, 11-12.

79 *Rovin, D.D.S. v. PUC*, 502 A. 2d 785 (Pa.Cmwlth 1986); *Pickford v. PUC*, 4 A.3d 707 (Pa.Cmwlth. Ct. 2010); *see also Country Place Waste Treatment Company, Inc. v. PUC*, 654 A.2d 72 (Pa.Cmwlth 1995) (Commission lacks authority to regulate air quality where sewage treatment plant caused odor).

80 UNITED M.B. at 20.

statement is not true. Environmental regulations[81] – not utility regulations – establish the permissible limit for lead in drinking water.[82] PWSA has made extraordinary efforts to remediate lead in its system in response to a PADEP water quality mandate and a Consent Order and Agreement[83] entered into with PADEP ("PADEP's Lead COA"). UNITED also implies that because PADEP has not evaluated or approved PWSA's proposals to create an income-based reimbursement program or to end its neighborhood-based program that the Commission should.[84] This implication is disingenuous because: (1) there has been no allegation that PWSA is presently out of compliance with PADEP regulatory requirements; (2) it ignores the fact that PADEP's Lead COA that grants PWSA the discretion as to whether to replace private-owned portions of lead service lines or simply notify customers of "partial replacement" concerns;[85] and (3) it ignores the fact that PWSA has regularly briefed PADEP on its LSLR programs.[86] The fact that PADEP has not evaluated or specifically approved PWSA's income-based reimbursement program does not demonstrate that the Commission has the power to do so. It demonstrates that PWSA has gone well-beyond what is required by any PADEP directives, environmental regulations or any other federal or state mandates with regard to lead remediation.

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81 For example, 25 Pa. Code § 109.1102(a), establishes an action level for lead at 0.015 mg/L, and provides that the action level is exceeded when the concentration in more than 10% of the tap water samples collected during the monitoring period (known as the 90th percentile amount) is greater than the action level; 25 Pa. Code § 109.1107(d)(l) requires a system such as PWSA that exceeds the lead action level when conducting lead and copper tap monitoring to initiate lead service line replacement; 25 Pa. Code § 109.1107(d)(2) requires water suppliers that exceed the lead action level to replace annually at least 7% of the initial number of lead service lines in place in their system at the beginning of the first year of replacement; **and**, under 25 Pa. Code § 109.1107(d)(4), a water supplier is required to replace the system owned portion of the lead service line.

82 25 Pa. Code §§ 109.1101 to 109.1108.

83 UNITED St. 4 (Welter) at Appendix D (November 2017 Consent Order and Agreement).

84 UNITED M.B. at 21.

85 UNITED St. 4 (Welter) at Appendix D (November 2017 Consent Order and Agreement).

86 PWSA St. No. C-1R-Supp. (Weimar) at 5-6; PWSA Supplemental St. No. C-1SD (Weimar) at 23-24.

I&E claims that Commission jurisdiction over PWSA's private-side lead replacement policy is established under Section 1501 of the Code.[87] However, it provides no support for that assertion.[88] I&E further argues that because elevated lead levels in water *derives* from lead infrastructure, that the Commission has jurisdiction over PWSA's income-based reimbursement policy.[89] As mentioned above, if the lines containing lead did not impact the level of lead in tap water, causing a water quality issue, there would be no reason to remove them. The level of lead in tap water (even though the lead stems from a service line) is undeniably a "water quality" issue that is clearly regulated by PADEP and not the Commission. And no prior PUC or court case has ever suggested that the PUC maintains jurisdiction because the utility is providing a "service" using its facilities.[90]

Nor is it persuasive to claim that the Commission has jurisdiction because PWSA's private-side lead replacement policy involves "hazards to public safety due to the use of utility facilities."[91] The reason that a "public safety" issue is created is because lead negatively affects the water quality of a utility. But the PADEP has already set forth a health-based "Lead Action Level" and establishes directives when the "Lead Action Level" is exceeded.[92] Importantly, PWSA's lead remediation efforts go well beyond any legal or regulatory requirements and well

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87 I&E M.B. at 76.

88 I&E M.B. at 76, 81-82.

89 I&E M.B. at 21

90 In addition, this argument ignores the fact that even if one were to conclude that the lead problem stems from "facilities" they are not PWSA's facilities – they are the customer's.

91 I&E M.B. at 82.

92 *Rovin, D.D.S. v. PUC*, 502 A. 2d 785 (Pa.Cmwlth 1986).

beyond what will be necessary from a health or safety standpoint, since PWSA's corrosion control plan will reduce the lead levels in tap water to well below the PADEP action level.[93]

Second, none of the opposing parties acknowledge or recognize that their demand that PWSA replace private lines is inconsistent with PWSA's tariff and precedent establishing that a utility is not responsible for facilities owned by the customer. As far as PWSA is aware, the PUC has never ordered a utility to take responsibility for replacing private service lines of its customers. That is because it is questionable whether the PUC even has legal authority to do so. Notably, just recently the Pennsylvania General Assembly added a provision which permits a regulated water utility to recover the cost of replacing private service lines in its rates, but nowhere mandates such replacement.[94] Would the General Assembly have to add such a provision if the PUC already had the authority to order a utility to replace the facility? It would not. A recent enactment of the Legislature also limits a municipality's expenditure of funds for the replacement of private service lines unless "the authority determines that the water replacement or remediation will benefit the public health, public water supply system or public sewer system."[95] PWSA has made the determination that the income-based reimbursement program – along with all of its other lead remediation steps – is what it needs to do to benefit health.

Finally, and just as important, it appears that both OCA and I&E fundamentally misunderstand PWSA's stated policy for the replacement of lead service lines – a policy that is

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

94 66 Pa.C.S. § 1311.

95 PWSA M.B. at 71, ft. 296.

memorialized and to which they agreed in the Partial Settlement.[96] I&E and OCA call for the Commission to reject PWSA's income-based reimbursement policy in favor of a "comprehensive plan" to replace all residential lead service lines in its system at no direct cost to customers.[97] But the Partial Settlement *already reflects* PWSA's comprehensive plan for addressing lead remediation issues.[98]

PWSA has committed to a SDWMR Program that will eventually remove 100% of the residential public side lead service lines.[99] PWSA has also committed to replacing the private-side line when the public side is replaced – to avoid partial replacements – or when it otherwise touches the service line.[100] PWSA's target is to replace all lead service lines serving a residence (of which it is aware and are operationally feasible to replace) in its system by 2026.[101] Contrary to assertions that the income-based reimbursement policy's goal is to fill a gap in PWSA's replacement efforts,[102] the goal of the policy is to offer financial assistance to customers that do not want to wait for a replacement via the SDWMR program.[103] The issue is therefore not whether these lines will be replaced but when the lines will be replaced. Consequently, assertions that the income-based reimbursement policy will result in fewer service lines being replaced[104] are simply not correct.

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96 OCA M.B. at 28; I&E M.B. at 21.

97 OCA M.B. at 28; I&E M.B. at 21.

98 Joint Petition at 43-53.

99 PWSA Hearing Exh. 3 (LTIIP) at 28, Table 2-8.

100 PWSA M.B. at 61.

101 PWSA Main Brief at 57.

102 UNITED M.B. at 27.

103 PWSA M.B. at 64-65.

104 *See* I&E M.B. at 68; OCA M.B. at 8, 19-20; UNITED M.B. at 32-36.

Beyond these overarching considerations, the various claims suggesting that the income based reimbursement/payment policy is unreasonable or unfair are incorrect or have been adequately addressed by PWSA. The income based policy reasonably balances the somewhat conflicting policy goals of effectuating the full replacement of lead service lines throughout its system as soon as reasonably possible while controlling ratepayer costs and being fair to ratepayers generally. As discussed above, PWSA has voluntarily agreed to replace residential private lead service lines whenever it replaces the public side, and to create a plan for the eventual replacement of all residential lead service lines – public AND private. Those remediation efforts will cost hundreds of millions of dollars, and while PWSA is committed to finding any and all public financing or low interest loans it can secure to offset this cost, the great bulk of the burden will have to be recovered from PWSA ratepayers. Moreover, PWSA has also implemented a corrosion control program using orthophosphate which will reduce lead levels to well below the PADEP/EPA "Action Levels," further reducing the urgent need to replace all lead lines.

Nonetheless the OCA and UNITED claim that lead service line replacements under the income-based policy should be rejected because the plan is "inefficient" in comparison to PWSA replacements which can be arranged to avoid multiple street openings.[105] But customer-side replacements are typically performed by smaller plumbing firms that utilize trenchless technology which eliminate the cost efficiencies of grouping requests geographically.[106] PWSA's plan would have customers hire contractors (potentially from a pre-approved list to

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105 OCA M.B. at 27-28; UNITED M.B. at 35-36.

106 PWSA St. C-1RJ (Weimar) at 9.

make it easier for them to find a qualified plumber) to conduct the customer-side work.[107] Significantly, PWSA has found that a homeowner can replace a private-side lead service line at about 75% of the direct construction cost that PWSA averages.[108]

Moreover, PWSA has sufficiently addressed the concern that the income based policy will unfairly require households to cover the cost of replacement upfront.[109] As explained in PWSA's Main Brief, PWSA is willing to modify its program to address this concern so that customers would not need to "front" the payment and await reimbursement. PWSA also expressed a willingness to work with the Community Lead Response Advisory Committee ("CLRAC") to enable tenants of eligible multi-family dwellings to qualify for the program based on the income of the tenants and not the landlord. In addition, PWSA is willing to commit to consulting with CLRAC regarding the development of its outreach program for the income-based reimbursement policy.[110]

The parties objecting to PWSA's income-based reimbursement program have also claimed that the administrative costs of the program are too high.[111] PWSA made a rough estimate that it would expend $1,000 for administrative costs to enroll each low and moderate income customer in the program.[112] UNITED claims that PWSA does not expend resources to determine a customers' income when they offer free lead service line replacements to all customers.[113] While that statement is true, it does not consider that even with the added

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107 PWSA St. C-1RJ (Weimar) at 11-12.

108 PWSA St. C-1RJ (Weimar) at 9-10.

109 UNITED M.B. at 86; OCA M.B. at 20; I&E M.B. at 86.

110 PWSA St. C-1RJ (Weimar) at 11-12; PWSA M.B. at 76-77.

111 I&E M.B. at 68, 76, 84-85; OCA M.B. at 19; UNITED M.B. at 31.

112 UNITED St. C-1SUPP-R (Miller) at Appendix A.2.

113 UNITED M.B. at 31.

administrative costs, because homeowners would hire their own private plumber, who can make the private line replacement less expensively than PWSA, the income-based reimbursement program is nonetheless millions of dollars less expensive than if PWSA replaced all of these lines. Thus, on net, the income-based reimbursement program will lower the overall cost to ratepayers compared to if PWSA performed the work directly.[114]

With regard to private-side only lead service lines (lines where the public side has already been replaced at some time in the past), OCA claims that PWSA has provided no reasonable basis for not replacing those lines at no direct cost to customers.[115] Contrary to OCA's assertion,[116] PWSA's current LSLR Policy does provide that residential customers that received a partial public service line replacement after February 1, 2016 (and now have a private-side only lead service line), are eligible to have their private side lead service line replaced by PWSA at no direct cost to the customer.[117] Moreover, the Joint Petition reflects that PWSA will offer to replace a private-side only lead service line at no direct cost to a property owner that is within a work order area of a neighborhood-based lead service line program where replacements are performed after completion of the 2019 LSLR Program.[118] Finally, if they still exist, these lines also will be replaced at no direct cost to the customer when they are "touched" pursuant to PWSA's SDWMR program.

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114 PWSA St. C-1RJ (Weimar) at 13.

115 OCA M.B. at 27.

116 OCA M.B. at 26.

117 July 26, 2019 LSLR Policy at 3.1. In addition, the LSLR Policy provides for reimbursement of costs to customers that replaced their own private-side LSLs as a result of a PWSA public-side replacement performed between February 1, 2016 and December 31, 2018. *See* LSLR Policy at 3.2.

118 Joint Petition § VV.1.a.ii.

It is reasonable for PWSA's lead remediation efforts to afford different treatment to customer-owned lead service line replacements that are not prompted by PWSA removal of a corresponding public side lead line.[119] As previously stated, PWSA has established a voluntary policy to cover private line replacements and is under no regulatory obligation to replace private side lines that it does not own.[120] All of these lines will eventually be replaced at no direct cost to the customer, if the customer is willing to wait until the SDWMR program addresses them. Finally, as this issue is clearly a water quality issue, PWSA respectfully submits that the Commission does not have the authority to direct PWSA to proceed in a manner different than that which has been presented to PADEP.

As noted, PWSA's introduction of a proven and effective corrosion control program will substantially reduce lead levels and immediate concerns about PWSA water quality while PWSA systematically removes public and private lead lines from its system, thus removing health concerns associated with non-PWSA owned private-only lead lines that may remain.[121] Notwithstanding this, both I&E and UNITED make the wholly irrational allegation that because of PWSA's prior missteps with regard to its prior corrosion control plan, its current efforts are somehow suspect.[122] These allegations are unreasonable and uncalled for. The issues with prior corrosion control occurred starting in 2014 and were guided by Veolia Management Services, a company that PWSA had previously contracted with for management services.[123] Veolia is long gone. Moreover, PWSA's present efforts have been approved by PADEP and, by all accounts,

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119 PWSA M.B. at 78.

120 PWSA M.B. at 71.

121 PWSA St. No. C-1R (Weimar) at 41.

122 I&E M.B. at 78-80; UNITED M.B. at 21-22.

123 I&E M.B. at 78-80; UNITED M.B. at 21-22.

successfully implemented.[124] The missteps of PWSA's prior management are irrelevant to this proceeding (the purpose of which is to come up with a plan to transition PWSA to Commission jurisdiction).

I&E then attacks reliance on corrosion control (orthophosphate) as an effective method to dramatically reduce lead levels in its water system from another angle.[125] I&E expressed that delays in obtaining construction permits from the City for the orthophosphate addition facilities indicate that PWSA and the PUC should not rely on orthophosphate as an effective corrosion control measure.[126] This is simply nonsensical. The PADEP approved system was completed and placed into service in April and May 2019. This treatment system is a permanently constructed component of the PWSA water treatment processes, and is subject to no other City related permitting. Now that construction permits have been obtained, the City has no further rule in the program. Moreover, PWSA has been mandated by the PADEP to treat its water using orthophosphate, and as such, it cannot discontinue treatment without PADEP approval. Lastly, PWSA's treatment data and system wide water testing have demonstrated that the longer orthophosphate is present in its water system, the more effective it is at reducing lead levels in customers' water.[127] As demonstrated by data and test results (and specific PWSA based professional treatment studies approved by PADEP), PWSA expects that lead levels will be reduced to well below the lead action level as the effectiveness of orthophosphate continues to increase.[128] The only "outside influence" PWSA anticipates it will encounter with regard to its

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124 PWSA St. No. C-1RJ (Weimar) at 17-18; UNITED St. No. C-2 (Welter) at 9; Exhibit RAW/C-22.

125 I&E M.B. at 79-80.

126 I&E M.B. at 80.

127 PWSA St. No. C-1RJ (Weimar).

128 PWSA St. No. C-1RJ (Weimar).

corrosion control program is the regulatory oversight of PADEP should PWSA decide it would like to make any changes to its program.[129] Consequently, the Commission should dismiss the parties' "concerns" about PWSA's reliance on orthophosphate (which enables it to implement a lead service line replacement program that balances PWSA's infrastructure needs and financial and operational considerations and commitments).[130]

b. Continuation of Neighborhood-Based Replacement Program

PWSA's 2019 LSLR Program, which replaces service lines on a neighborhood basis, will be complete in 2020, at which time PWSA intends to focus on replacing lead service lines through its SDWMR program. PWSA's SDWMR program will eventually replace all public side lines (and PWSA has committed to replace the private side of the line when it replaces the public side or relay).[131] PWSA's goal is to replace all lead service lines serving its customers' residences (of which it is aware and are operationally feasible to replace) in its system by 2026.[132] The Joint Petition for Settlement also contains several other LSLR commitments, including that PWSA would estimate all lead service lines in its territory (connected to a residence) by the end of 2020, and by March 31, 2021, formulate a plan and timeline for removing the known public and private-side lines connected to a residence.[133] Importantly, PWSA's future plans to remove all known residential public and private-side service lines may include a neighborhood LSLR program.[134]

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129 25 Pa. Code § 109.1105.

130 PWSA St. No. C-1RJ (Weimar) at 18.

131 PWSA M.B. at 57; PWSA Hearing Exh. 3 (LTIIP) at 28, Table 2-8.

132 PWSA M.B. at 57.

133 Joint Petition § III.QQ.2.a.

134 PWSA M.B. at 77; PWSA St. C-lRJ (Weimar) at 16-17.

Neither OCA nor I&E oppose the discontinuation of PWSA's neighborhood-based program.[135] I&E offered that PWSA may need to complement its SDWMR and other lead service line replacement efforts to accomplish its 2026 target for lead removal.[136] OCA suggests that through a new comprehensive plan, PWSA could "identify a method of grouping private-side only lead service line replacements to enhance efficiency, both for mobilizing crews and equipment and for restoration work such as street and sidewalk repair" and that such a method may be very similar to the current neighborhood-based LSLR program.[137] While the Joint Petition for Settlement already sets forth PWSA's agreed upon comprehensive plan for addressing lead remediation issues (except for its income-based reimbursement policy), PWSA's future plans may include a neighborhood-based program, depending on the results of its inventory studies, SDWMR replacement locations and available resources.

UNITED urges the Commission to "direct PWSA either to continue the neighborhood-based program or develop a new program that offers free lead service line replacements to all customers."[138] In expressing dissatisfaction with the discontinuation of the neighborhood-based program, UNITED fails to acknowledge: (1) PWSA's Partial Settlement commitment to replace at least ten miles per year of SDWMR in Priority Lead Neighborhoods starting in 2021; and (2) that UNITED, as a member of CLRAC, will have the opportunity to consult with PWSA on the designation of those priority areas.[139] UNITED also failed to explain how a "new program"

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135 OCA does not necessarily oppose the discontinuation of PWSA's neighborhood-based program in 2020. OCA M.B. at 27-28; I&E explained in its Main Brief that its concerns regarding PWSA's plan to discontinue the neighborhood-based replacement program were addressed in the Joint Petition for Partial Settlement. I&E M.B. at 96.

136 I&E M.B. at 96.

137 OCA M.B. at 28.

138 UNITED M.B. at 2.

139 Joint Petition § III.VV.2.a; *see also* § III.QQ.3.

would work in conjunction with the SDWMR replacements and PWSA's other programs. (PWSA's water main inventory related to lead service line locations exhibits a high rate of failure, due to extensive corrosion. As a result, focus on lead service line replacements will encounter water mains in extremely poor condition, which will exhibit high failure rates to install new services without main replacement. These construction related failures demand that PWSA replace water mains at the same time that lead service lines are replaced. Therefore, until the SDWMR locations are known, the concurrent operation of a neighborhood-based program could be counterproductive and produce inefficiencies.[140]

PWSA's future plans will be established based on the results of the lead line inventory (agreed to in the Joint Petition for Settlement), available resources and the location of SDWMR replacements. As previously stated, "PWSA cannot adequately plan for a neighborhood LSLR until probably 2024 when it knows where all the 2020-2026 SDWMR areas will be."[141] Through the Joint Petition for Settlement, PWSA has committed to evaluating future plans for lead service line replacements to meet its target.

Based on the foregoing reasons, it would be premature and unreasonable for PWSA to commit to a neighborhood-based LSLR. PWSA respectfully requests that the Commission not mandate PWSA to continue its neighborhood based program as it does not have jurisdiction to do so and PWSA's comprehensive plan to address lead goes well beyond any legal or regulatory requirements.

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140 PWSA St. C-lRJ (Weimar) at 17.

141 *Id.*

2. Replacement of Non-Residential Lead Service Lines

Only OSBA took a position on whether and how PWSA should be compelled to replace non-residential lead service lines.[142] In its Main Brief, OSBA opposes PWSA's Lead Service Line Replacement Policy[143] which generally renders non-residential customers ineligible to participate in its lead service line replacement program. OSBA requests that the Commission order PWSA to expand its LSLR Policy to include all of PWSA's non-residential customers (and that PWSA offer nonresidential customers a $1,000 stipend in lieu of the income-based reimbursement policy).[144] For the reasons set forth below, OSBA's positions on this issue are fundamentally flawed and should be rejected.

OSBA does not address the issue that whether PWSA should or should not replace a lead or galvanized iron service line is a water quality issue regulated by PADEP – not the Commission.[145] As previously noted, PWSA is under no regulatory obligation from PADEP (or any other entity) to replace private lead or galvanized iron service lines (which it does not own) – for either residential or non-residential customers.[146] Consequently, the decision as to whether to

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142 OSBA M.B. at 9-12. The other active parties did not address this issue in their Main Briefs. *See* OCA M.B. at 28; I&E M.B. at 96; UNITED M.B. at 40 and PAWC's letter confirming that PAWC did not file a Main Brief in this matter.

143 Galvanized iron service lines (serving certain residential properties and dual use properties) are included in PWSA's Lead Service Line Replacement Policy due to concerns that galvanized iron service lines were typically joined to a lead public service line and lead leaching from the public lead segment can be deposited on the inside of galvanized iron piles, leading to lead leaching if only the public side is replaced in these instances. PWSA M.B. at n. 324.

144 OSBA M.B. at 10-12.

145 PWSA M.B. at 78.

146 PWSA M.B. at 78.

replace non-residential lead service lines is fully within PWSA's discretion and falls outside of the Commission's regulatory authority.

OSBA erroneously claims that there is no valid reason to distinguish between residential and non-residential LSLs.[147] As explained in PWSA's Main Brief, non-residential service lines are structured differently than residential lines which warrants different treatment of the lines.[148] The primary distinction is that none of the non-residential customers that have a private lead or galvanized service line also have a lead or galvanized iron public side line.[149]

OSBA incorrectly asserts that the public health hazard posed by lead service lines is the same for residential and non-residential customers.[150] But PWSA has committed to replacing the private side of residential lead service lines when the public side is being replaced to avoid "partial" replacements (replacing one part of the lead service line and not the other).[151] The avoidance of "partial" replacements is the public health issue that PWSA is addressing in its voluntary policy to cover private line replacement. There are no concerns about the increase in water lead levels by "partial" replacements for non-residential customers; consequently, there is no similar public health policy reason to have PWSA ratepayers pay the cost to replace those privately owned lines. Furthermore, PWSA anticipates that orthophosphate will reduce lead levels in both residential and non-residential tap water to well below the lead action level established by federal and state drinking water regulations.[152]

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147 OSBA M.B. at 10.

148 PWSA M.B. at 77-78.

149 PWSA M.B. at 79; PWSA St. C-1R Supp (Weimar) at 4.

150 OSBA M.B. at 10.

151 PWSA M.B. at 79.

152 PWSA M.B. at 61; 25 Pa.Code § 109.1102(a)(1).

Finally, OSBA did not attempt to challenge PWSA's explanation that its decision to replace residential private lead and galvanized lines can be attributed, in part, to the distinct financial positions of residential and non-residential customers.[153] Moreover, there is no record evidence that indicates that business owners are incapable of funding these replacements or that the cost that would be imposed on remaining ratepayers would be reasonable.[154]

For the reasons set forth above, OSBA's positions on this issue should be rejected. Significantly, as a water quality issue, PWSA's determination on whether and how PWSA should replace non-residential lead service lines is outside the Commission's purview.

F. OTHER ISSUES

None.

III. CONCLUSION

PWSA respectfully requests that the ALJs and the Commission: (1) approve the Partial Settlement, which is in accordance with the law, just and reasonable, and in the public interest; (2) approve the Compliance Plan which – as supplemented by the Compliance Plan Supplement and as modified by the Partial Settlement – satisfies the requirements of Chapter 32 of the Public Utility Code and the Commission's FIO, and will result in PWSA providing safe, reliable and reasonable service consistent with applicable law and Commission regulations;[155] (3) reject any remaining issues, proposals, modifications and/or adjustments proposed by the active parties or other participants hereto which are inconsistent with the plans set forth in the Compliance Plan, as supplemented by the Compliance Plan Supplement and as modified by the Partial Settlement;

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153 PWSA St. C-1RJ (Weimar) at 9-10.

154 PWSA M.B. at 80.

155 *See* 66 Pa.C.S. § 3204(c).

(4) declare the Commission's intention to refrain from subjecting PWSA to fines or penalties during PWSA's efforts to achieve full regulatory compliance, so long as PWSA is operating under the terms and conditions of the Compliance Plan; (5) approve PWSA's LTIIP (PWSA Hearing Exh. 3), which (a) conforms to the requirements of Chapter 13 of the Public Utility Code, the Commission's LTIIP Regulations, and the FIO and (b) is "adequate and sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service;"[156] and (6) direct PWSA to file any tariff revisions necessary to implement the PUC's Order.

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Date: September 30, 2019

156 *See* 66 Pa.C.S. § 1352(a).